

CHAPTER 491. COOPERATIVE SAVINGS ASSOCIATIONS

COOPERATIVE SAVINGS ASSOCIATIONS

Act 206 of 1877

491.1-491.21 Repealed. 1964, Act 156, Eff. Jan. 1, 1965;—1964, Act 256, Eff. Aug. 28, 1964.

SAVINGS AND LOAN ACT OF 1980
Act 307 of 1980

AN ACT to revise and codify the laws relating to savings and loan associations; to provide for the incorporation, regulation, supervision, and internal administration of associations; to prescribe the rights, powers, and immunities of associations; to provide for voluntary and involuntary changes in the corporate structure of associations; to prescribe the powers, rights, and duties of certain state agencies in relation to associations; to require certain reports and examinations of associations; to prescribe remedies and penalties for violations of this act; and to repeal certain acts and parts of acts.

History: 1980, Act 307, Eff. Jan. 1, 1981.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

The People of the State of Michigan enact:

ARTICLE 1

491.102 Short title.

Sec. 102. This act shall be known and may be cited as the “savings and loan act of 1980”.

History: 1980, Act 307, Eff. Jan. 1, 1981.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

491.104 Meanings of words and phrases.

Sec. 104. As used in this act, the words and phrases defined in sections 106 to 160 shall have the meanings ascribed to them in those sections unless the context clearly requires another meaning.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.106 “Agency” defined.

Sec. 106. “Agency” means an approved place of business at which the business of an association is conducted other than by regularly employed personnel of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.107 “Bank” defined.

Sec. 107. “Bank” means a state banking corporation organized or reorganized under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or organized under any law of this state enacted before March 1, 2000 or a national bank having its principal office in this state.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 2000, Act 365, Imd. Eff. Jan. 2, 2001.

491.108 “Association” defined.

Sec. 108. “Association” means a domestic association or a domestic savings bank, except as provided in sections 460 to 470. Any reference in any other law of this state to a domestic savings and loan association shall also be considered to be a reference to a domestic savings bank, unless the context indicates otherwise.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.110 “Board” defined.

Sec. 110. “Board” means the board of directors of an association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.112 “Branch office” defined.

Sec. 112. “Branch office” means, except as otherwise provided in this section, an approved place of business of an association, other than its principal office or an agency of an association, at which the association, through its employees, may transact the kind of business that may be conducted at its principal office. The receipt of deposits by a messenger service or the delivery by a messenger service of items representing deposit account withdrawals or of loan proceeds is not the establishment or operation of a branch, whether or not the messenger service is owned or operated by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1993, Act 89, Imd. Eff. July 9, 1993.

491.114 “Capital in excess of par” defined.

Sec. 114. “Capital in excess of par” means the net worth of a stock association other than the following: its stated capital, its retained earnings, and its liabilities arising from the issuance of capital notes, bonds, or debentures under section 516.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.116 “Chief executive officer” defined.

Sec. 116. “Chief executive officer” means the officer of an association as designated by the association pursuant to its bylaws, who shall be the officer responsible for receiving communications from the supervisor and other regulatory authorities.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.120 “Depositor” defined.

Sec. 120. “Depositor” means a person who is the owner of money that has been deposited to an account in an association, according to the records of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.122 “Domestic association” defined.

Sec. 122. “Domestic association” means a corporate organization that transacts a savings and loan business as provided in this act under articles of association, articles of incorporation, or other charter issued by this state.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.123 “Domestic savings bank” defined.

Sec. 123. “Domestic savings bank” means a corporate organization that transacts business as a savings bank under articles of association, articles of incorporation, or other charter issued by this state.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.124 “Federal association” defined.

Sec. 124. “Federal association” means a corporate organization that transacts business pursuant to authority granted under the home owners' loan act of 1933, 12 U.S.C. 1461 to 1468, with its principal office located in this state.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.126 “Foreign association” defined.

Sec. 126. “Foreign association” means a federal association with its principal office located in another state and any other corporate entity that transacts a savings and loan business as provided in this act pursuant to authority granted by the laws of another state.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.128 “Insolvent condition” defined.

Sec. 128. “Insolvent condition” means a condition in which the total liabilities of an association, other than liabilities arising from the issuance of debt under section 516, to depositors and all other creditors equal or exceed its total assets.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.130 “Member” defined.

Sec. 130. “Member” means in a mutual association, a depositor holding a savings account, except as otherwise provided in section 606(b); or in a stock association, a person owning voting capital stock of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.131 “Messenger service” and “depository institution” defined.

Sec. 131. “Messenger service” means a service such as a courier service or an armored car service that picks up from or delivers to customers of 1 or more depository institutions or 1 or more affiliates of a depository institution cash, currency, checks, drafts, securities, or other items relating to transactions between or involving a depository institution or affiliate of a depository institution and those customers, or that transfers cash, currency, checks, drafts, securities, or other items or documents between depository institutions or affiliates of depository institutions. The service may be owned and operated by 1 or more

depository institutions or affiliates or by a third party. As used in this subdivision, “depository institution” means a state or national chartered bank, a state or federal chartered savings and loan association, a state or federal chartered savings bank, or a state or federal chartered credit union.

History: Add. 1993, Act 89, Imd. Eff. July 9, 1993.

491.131a “Mobile branch” defined.

Sec. 131a. “Mobile branch” means a branch office in which the location of the physical structure of the branch office is moved from time to time.

History: Add. 1993, Act 89, Imd. Eff. July 9, 1993.

491.132 “Mobile home” defined.

Sec. 132. “Mobile home” means a movable dwelling designed to be used exclusively on land, having a minimum area of 400 square feet, to be used primarily as living facilities for year-round occupancy, and designed so as to be transportable on a highway behind a motor vehicle.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.134 “Mutual association” defined.

Sec. 134. “Mutual association” means an association that does not have authority to issue shares of voting capital stock.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.136 “Net worth” defined.

Sec. 136. “Net worth” means the amount by which the total assets of an association exceeds its total liabilities, other than liabilities arising from the issuance of debt under section 516, as determined in accordance with generally accepted accounting principles.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.138 “Office” defined.

Sec. 138. “Office” means a branch office or principal office.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.140 “Person” defined.

Sec. 140. “Person” means an individual, sole proprietorship, partnership, domestic or foreign association, or any other association, corporation, trust, or legal entity.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.142 “Real estate loan” defined.

Sec. 142. “Real estate loan” means a loan or obligation secured by an interest in real estate, including a leasehold extending or automatically renewable for a period beyond the date for final repayment of the loan or obligation, or any transaction out of which a lien or claim is created against the real estate.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.144 “Remote service unit” defined.

Sec. 144. “Remote service unit” means a facility established pursuant to Act No. 322 of the Public Acts of 1978, being sections 488.1 to 488.31 of the Michigan Compiled Laws. A remote service unit of an association shall not be considered to constitute a branch office or agency.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.146 “Retained earnings” defined.

Sec. 146. “Retained earnings” means:

(a) In the case of a stock association the accumulated gains and profits of the association, after deduction of all losses, that have not been distributed to members as earnings or dividends, transferred to stated capital or capital in excess of par, or applied to other purposes permitted by law.

(b) In the case of a mutual association the accumulated gains and profits of the association, after deduction of all losses, that have not been distributed or accrued for distribution to members as interest, set aside for or allocated to the general reserve account required by section 526, or set aside for or allocated to any specific reserve accounts created by the association or applied to other purposes permitted by law.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.148 "Savings liability" defined.

Sec. 148. "Savings liability" means the total amount on deposit in all savings accounts of an association plus all interest or earnings accrued or accumulated on the deposits.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.150 "Service corporation" defined.

Sec. 150. "Service corporation" means a corporation organized under the laws of a state which is subject to the investment limitations set forth in section 714 and which engages in activities determined by the supervisor by order or rule to be incidental to the conduct of a savings and loan business as provided in this act or activities which further or facilitate the corporate purposes of an association, or furnishes services to an association or subsidiaries of an association, the voting stock of which is owned directly or indirectly by 1 or more associations or federal associations.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.152 "Stated capital of a stock association" defined.

Sec. 152. "Stated capital of a stock association" means the sum of the par value of all shares of capital stock outstanding.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.154 "Stock association" defined.

Sec. 154. "Stock association" means an association with authority to issue shares of voting capital stock.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.156 "Supervisor" defined.

Sec. 156. "Supervisor" means the commissioner of the financial institutions bureau of the department of commerce, or other officer designated by law to administer this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.158 "Total assets" defined.

Sec. 158. "Total assets" means the aggregate value of the properties and rights entered upon the books of an association in accordance with generally accepted accounting principles.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.160 "Total liabilities" defined.

Sec. 160. "Total liabilities" means the aggregate value of the obligations to pay money or funds to others entered upon the books of an association in accordance with generally accepted accounting principles.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 2

491.200 Powers and duties of supervisor generally; requirements as to approvals, rules, and orders; designation and duties of director of savings and loan; employment and duties of staff personnel; payment of salaries and expenses; form and contents of articles of incorporation and bylaws; promulgation and copies of rules.

Sec. 200. (1) The supervisor shall supervise all associations subject to this act. The supervisor shall enforce this act by use of the powers conferred in this act and by reference to the courts when required. An approval granted, a rule adopted, or order issued by the supervisor under this act shall be in writing and shall be addressed to the association's board, or the chief executive officer of the association, at the principal office of the association. The supervisor shall designate a person to be known as the director of savings and loan, shall employ, subject to civil service requirements, the necessary staff personnel to assist the director in the discharge of the duties imposed upon the director, and shall prescribe the duties of the director and the staff personnel. The salaries and the actual and necessary traveling expenses of the director and the staff personnel and all other expenses incurred by the supervisor in the performance of duties imposed by law shall be paid out of appropriations made by the legislature in accordance with the laws of this state.

(2) The supervisor may prescribe the form and contents of articles of incorporation and bylaws to be adopted by all associations. The supervisor may promulgate rules in addition to those specifically provided for by this act as the supervisor considers necessary to effectuate the purposes of and enforce this act. All rules shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. The rules in force on the effective date of this act and

which were adopted pursuant to former sections 1 to 457 or 461 to 520 of Act No. 156 of the Public Acts of 1964 shall remain in force and apply to all associations insofar as the rules do not conflict with this act. The supervisor shall mail a copy of each rule or amendment to a rule to each association and each federal association within 15 days after the rule or amendment to the rule becomes effective.

History: 1980, Act 307, Eff. Jan. 1, 1981.

Compiler's note: Act 156 of 1964, referred to in this section, was repealed by Act 307 of 1980.

Administrative rules: R 491.101 et seq. of the Michigan Administrative Code.

491.202 Examination by supervisor; report; access to books and papers; witnesses; oaths; production of documents.

Sec. 202. (1) The supervisor shall periodically examine into the affairs of every association, its subsidiaries, or service corporations. Instead of the examinations, the supervisor may accept an examination made by the federal home loan bank board, the federal savings and loan insurance corporation, the federal deposit insurance corporation, or by an independent public accountant. If, in the judgment of the supervisor, the condition of an association, its subsidiaries, or service corporations renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to the association's affairs or the affairs of its subsidiaries or service corporations the supervisor shall cause the work to be done at the association's expense.

(2) A report of the examination of an association, its subsidiaries, or service corporations conducted under this section shall be furnished to the association examined. Within 45 days after receipt by the association, the report of examination shall be presented to the board of the association at a regular or special meeting. The board shall acknowledge receipt of the report in its minutes of meetings, and make a record in its minutes of the reply to the report.

(3) The supervisor or designated staff personnel shall have unrestricted access to all books and papers kept by an officer, agent, or employee of an association, its subsidiaries, or service corporations relating to, or upon which, any record of its business is kept, and may:

(a) Summon witnesses and administer oaths of affirmations in the examination of the directors, officers, agents, or employees of an association, its subsidiaries, or service corporations or any other person in relation to its affairs.

(b) Compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.204 Reports to supervisor; penalty for failure to file statement or report.

Sec. 204. Each association before February 2 each year shall file with the supervisor a full and detailed statement of the association's financial condition as of the preceding December 31 and the business transacted during the preceding year. The statement shall set forth the amount and character of the association's assets and liabilities and shall contain other information in the form prescribed by the supervisor. Each report shall be subscribed and sworn to by the chief executive officer of the association. An association shall make all other reports as the supervisor may require. An association failing to file the required annual statement or any other required report within periods of time prescribed by this act or by the supervisor, shall forfeit \$10.00 per day for each day the statement or report is overdue. The supervisor may request that the attorney general bring an action in the name of the people of this state to recover the penalty which shall be paid into the general fund.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.206 Disclosures by supervisor, assistants, or employees; confidentiality; penalty; removal from office.

Sec. 206. The supervisor, or any of the supervisor's assistants or employees, shall not divulge information acquired in the discharge of their duties prescribed by this act, except if the disclosure may be necessary to comply with state or federal law or order of a court of competent jurisdiction. The supervisor may furnish information as to the condition of an association to the federal home loan bank board, the federal savings and loan insurance corporation, a federal home loan bank, the federal deposit insurance corporation, the federal reserve board, a federal reserve bank, or regulators of savings and loan associations or savings banks of other states. The supervisor, when furnishing information pursuant to this section, shall take steps as necessary to insure that the information provided is maintained at the same level of confidentiality as is required of the supervisor by this section. A person appointed or acting under this act who fails to keep confidential any fact or information concerning an association obtained in the course of an examination or by reason of the

person's official business, except if the legal duty of the officer requires the officer to report upon or take official action regarding the affairs of the association examined, or who willfully makes a false official report as to the condition of an association, is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, or imprisonment for not less than 1 month nor more than 6 months. A conviction under this section shall automatically remove the person from his or her position or office.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.208 Documents; filing with supervisor.

Sec. 208. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the supervisor together with the fees required by law. If the document is considered by the supervisor to substantially conform to the requirements of this act, the supervisor shall indorse upon the document the word "filed" with the supervisor's official title and the date of receipt and of filing of the document, and shall file and index the document in the supervisor's office. If requested at the time of delivery of the document, the supervisor shall include the hour of filing in the indorsement on the document. If requested by the person filing the document, the supervisor shall prepare and return a true copy of the document to the person who submitted the document for filing showing the filing date. The records and files of the supervisor relating to associations shall be open to reasonable inspection by the public. If the supervisor fails promptly to file a document, other than an annual report or a supplemental report to an annual report, submitted for filing under this act, the supervisor shall, within 20 days after receipt of a written request for filing, give written notice of the failure to file to the person, specifying the reasons for the failure. The person may appeal the disapproval pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(2) A document is effective at the time the document is indorsed by the supervisor, unless a subsequent effective time is set forth in the document which shall not be later than 90 days after the date of delivery.

(3) A document filed with the supervisor shall be in the English language, except that the association's name does not need to be in the English language if written in English letters or Arabic or Roman numerals.

(4) A document required or permitted to be filed under this act which is also required by this act to be executed on behalf of an association, shall be signed in ink by the chairperson or vice-chairperson of the board or the president or a vice-president of the association. If the association is in the control of a receiver, trustee, or other similar officer, the document shall be signed in ink by the fiduciary or by the majority of the fiduciaries, if there are more than 1. The name of a person signing the document and the capacity in which the person signs, shall be stated beneath or opposite the person's signature. The document may, but does not have to, contain an impression of the corporate seal of the association, an attestation by the secretary or an assistant secretary of the association, or an acknowledgment or proof of execution.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.210 Action without notice and without lapse of prescribed time period; waiver.

Sec. 210. If an association is required by this act, by the association's articles of incorporation or bylaws, or by the terms of an agreement or instrument to give notice to a person or observe the lapse of a prescribed period of time before taking a particular action, the action may be taken without notice and without lapse of the period of time if at any time before or after the action is completed, the person entitled to notice or to participate in the action to be taken submits a signed waiver of the notice requirement.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.212 Mailing of notice or communication.

Sec. 212. When a notice or communication is required or permitted by this act to be given by mail, the notice or communication shall be mailed, except as otherwise provided in this act, to the person to whom the notice or communication is directed at the address designated by the person for that purpose or, if an address is not designated, at the person's last known address. The notice or communication is given when deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be registered, certified, or other first class mail except if otherwise provided in this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 3

491.300 Application for permission to organize association; organization expenses; organizers and their appointment of agent; application as public document.

Sec. 300. Seven or more resident citizens of this state may file with the supervisor an application for permission to organize an association under this act. The application shall be executed by all organizers on forms approved by the supervisor, and shall be accompanied by the filing fee prescribed by this act. The application shall set forth the name and location of the proposed association; the name, residence address, and present principal occupation of each organizer; information regarding each organizer's financial responsibility and the nature and extent of any present or prior affiliation with financial institutions; an estimate of the dollar amount of organizational expenses expected to be incurred before commencement of the association's business; and any other information as the supervisor shall require. The organizers shall appoint 1 of their number to serve as their agent for the purpose of receiving communications from the supervisor. An application filed with the supervisor is a public document and shall be available for inspection at the supervisor's office pursuant to Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws, except that information concerning personal financial data of the organizers shall be treated confidentially by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.300a Organization of branch by foreign association; proof of federal insurance on deposits; determination of compliance; certificate of organization and eligibility to accept deposits and investments of public funds.

Sec. 300a. (1) A foreign association may apply to organize a branch in this state under this act by providing to the supervisor proof that its deposits are insured by an agency of the United States government.

(2) If the supervisor determines after receipt of the proof required under subsection (1) that the foreign association is safe and sound, that the foreign association is subject to regulation, that there exists an agreement for exchange of supervisory information between the bureau and the foreign association's regulator, and that the foreign association has otherwise complied with this act, the supervisor shall provide to the foreign association a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

History: Add. 1997, Act 51, Imd. Eff. June 30, 1997.

491.302 Notice of application; written objections; supplemental data; examination and investigation; hearing oral argument; decision.

Sec. 302. Within 10 days after receipt of the application for permission to organize an association, the supervisor shall send notice by mail to the principal office of each association and each federal association. A person to whom notice is sent may file with the supervisor written objections to the application which, if received in the supervisor's office within 15 days after the date notice is sent, shall become a part of the application file. Upon written request from the person filing objections, the supervisor may grant an additional 15 days for the submission of supplemental data in support of an objection which has been timely filed. The supervisor shall make an examination and investigation concerning the application to the extent considered necessary and advisable and as the circumstances require. The supervisor may receive additional information from the applicants, an interested party, or from other sources. Oral argument on an application shall be heard within 60 days after receipt of an application, at the discretion of the supervisor or at the written request of the applicant or a person timely filing objections to an application. The supervisor shall announce a decision concerning the application within 90 days after receipt of the application unless oral argument is held, in which case the decision shall be announced within 60 days after completion of an oral argument. The supervisor shall file in the supervisor's office a written memorandum stating the reasons supporting the decision, which memorandum shall be available for public inspection. The conduct of the oral argument shall not be subject to Act No. 306 of the Public Acts of 1969, as amended.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.304 Approval of application; criteria.

Sec. 304. If it appears to the supervisor that the conditions prevailing in the area where the association proposes to transact business afford a reasonable probability of success, that there is a need for the proposed association, that the character, responsibility, and general fitness of the organizers will command the confidence of the community in which the association is to be located and warrant a belief that the business of the association will be honestly and efficiently conducted, that the name proposed for the association conforms with the requirements of this act, and that the public interest will be served by establishment of the association, the supervisor shall approve the application.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.306 Approval of application; notice; authorization to proceed; conditions of approval.

Sec. 306. (1) When an application to organize an association is approved, the supervisor shall promptly advise the organizers of the approval of their application and shall authorize them to proceed to incorporate by complying with this act and by satisfying those conditions of approval determined by the supervisor to be consistent with this act and appropriate to reasonably assure initial successful organization of the association, the safety and soundness of its operations, and the protection of the public interest.

(2) The conditions of the supervisor's approval of the application shall include the following:

(a) That a minimum amount specified by the supervisor shall be paid to an organizational expense fund in cash by the organizers, within 30 days after the approval to guarantee payment of all organizational expenses incurred or expected to be incurred.

(b) In the case of a mutual association, that an aggregate minimum dollar amount and number of savings accounts shall be subscribed for and paid in cash.

(c) In the case of a stock association, that a satisfactory plan shall be adopted and filed with the supervisor to provide for the offering of, subscription for, and payment of minimum dollar amounts of stated capital, and capital in excess of par, necessary to permit the commencement of operations.

(d) That the savings deposits of the association shall be insured by the federal savings and loan insurance corporation.

(e) That satisfactory provision shall be made for fair and equitable policies and procedures governing lending operations, for adequate physical facilities in which to conduct operations and secure records and assets, for adequate staff personnel, and for an adequate accounting system to serve record keeping and reporting functions.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.308 Articles of incorporation; execution; filing; commencement of existence; expiration of approval.

Sec. 308. Within 60 days after receipt of approval of an application to organize an association, the organizers shall execute and file with the supervisor the required number of copies of articles of incorporation conforming to this act and the approval order. If approved, the supervisor shall file 1 copy of the articles of incorporation in the supervisor's office, and shall return 1 authenticated copy to the association together with a certificate of charter. The corporate existence of the association shall commence at the time of filing of the articles of incorporation as provided in section 208, which existence shall be perpetual unless terminated under this act. If the organizers of the proposed association do not file articles of incorporation within 60 days after the date of the supervisor's approval, the approval shall expire and become void, unless a written request for extension is approved by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.310 Articles of incorporation; contents.

Sec. 310. The articles of incorporation shall be signed and dated by each of the organizers, and shall set forth all of the following:

(a) The name of the association and location of the association's principal office of business.

(b) A statement that the association is organized for the purpose of conducting a savings and loan business as authorized by this act.

(c) A statement that the association is organized as a mutual association or as a stock association, and, if the association is to be a stock association, the number of shares of all classes of stock which the association has authority to issue, the par value of each share of each class, and a statement of the designations, powers, preferences, and rights of each class, and any qualifications, limitations, or restrictions on each class.

(d) The number of directors of the association, which shall be not less than 7, and the names of organizers who shall serve as initial directors until the first annual meeting of members of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.312 Surety bond; notice of payments from organizational expense fund; approval of payments; repayment of contributions and approved payments; repayment in case of liquidation; account of disbursements; restoration of improper expenditures.

Sec. 312. Within 30 days after commencement of corporate existence, or within a longer time not to exceed 1 year as approved by the supervisor, the initial directors of an association shall secure a surety bond, in a form and from a surety company acceptable to the supervisor, bonding the officers of the association in an amount at least equal to the amount of minimum established savings accounts or stock subscriptions plus the organizational expense fund. Notice shall be provided to the supervisor by the treasurer of the association

when all payments have been received and a detailed record shall be maintained showing the recipients, the amounts received, and the purpose for payment of all payments made from the organizational expense fund. An organization expense shall not be paid out of any other funds of the association without prior approval by the supervisor of a written request to make the payments. Contributions to the organizational expense fund and approved payments made to defray organization expenses in excess of the fund may be repaid pro rata from the net earnings of an association, after provision for all reserves and payment of interest on savings accounts, over a period of time approved by the supervisor. In case of the liquidation of an association before contributions to the organizational expense fund have been repaid, any contributions remaining unexpended after the payment of expenses of liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to the contributors pro rata. The supervisor may require an account of disbursements from the organizational expense fund, and may order restoration of amounts expended for improper purposes.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.314 Organizational meeting; adoption of bylaws; appointment of officers; establishment of association; approval of bylaws.

Sec. 314. Within 30 days after commencement of corporate existence, or within a longer time not to exceed 1 year as approved by the supervisor, the initial directors of an association shall hold an organizational meeting at which they shall adopt bylaws for the association for the regulation and management of the association's business, appoint a president, secretary, treasurer, and other officers as are necessary, and shall authorize the officers of the association to take all required action incidental or reasonably necessary to establish the association and be authorized to commence business. The bylaws adopted by the initial directors of the association shall be submitted to the supervisor for approval before the issuance of a certificate of authority to commence operations.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.316 Certificate of authority to commence operations; issuance; prerequisites; notice.

Sec. 316. A certificate of authority to commence operations shall be issued by the supervisor when an association has secured insurance of the association's savings accounts, has fulfilled the conditions of approval to the satisfaction of the supervisor, and has furnished evidence of compliance with the applicable provisions of this act. Upon receipt of a certificate of authority to commence operations, the association shall promptly notify the supervisor of the date the association will open for business, after which the association may conduct a savings and loan business as provided in this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.318 Failure of association to commence operations; forfeiture of existence; time extension; refunds to depositors and stock subscribers.

Sec. 318. An association which does not commence operations within 6 months after authority is granted as provided in section 316 shall forfeit its association existence and its articles of incorporation shall become null and void, except that upon written application stating the reasons, the supervisor may extend the time within which the association shall commence business. Upon forfeiture, all action taken in connection with the organization of the association, except payment of fees to the supervisor, shall become null and void. Amounts paid in and credited to the accounts of the depositors in savings accounts or to the accounts of subscribers for capital stock shall be returned to those persons.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.320 Name of association; requirements; prohibitions.

Sec. 320. The name of each association shall include the term "savings and loan association", "savings association", or "savings bank". This term shall be preceded by appropriate descriptive words approved by the supervisor. An ordinal number shall not be used as a single descriptive word preceding the words "savings and loan association", "savings association", or "savings bank", unless the words are followed by words designating the name of the city, village, township, county, or geographical region in which the association has its principal office. An ordinal number may be used together with another descriptive word preceding the words "savings and loan association", "savings association", or "savings bank", if the other descriptive word has not been used in the corporate name of any other association or bank currently engaged in business, in which case the suffix provided in this section is not required to be used. An ordinal number may be used together with another descriptive word preceding the words "savings and loan association", "savings association", or "savings bank", even when the descriptive word has been used in the corporate name of another association in the state, if the suffix as provided in this section, is also used. The suffix provided in

this section may be used in the name of any association organized under this act or a former act. The use of the words “national”, “federal”, “United States”, “insured”, “guarantee”, or any form of those words, separately, or in any combination with other words or syllables, is prohibited as part of the corporate name of an association. A certificate of charter shall not be issued by the supervisor to a proposed association which has the same name as an association or bank authorized to do business in this state or a name so nearly resembling the name as to be likely to deceive the public, except to an association formed by the reorganization or consolidation of the association with other associations, or upon the sale of an association's property or franchise. An association resulting from a merger of 2 or more associations may continue use of the name of any association merged into the association without the word “association”, to preserve the identity of the merging association, if the former name is followed by a disclosure that the former association is a division of the resulting association.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.322 Unlawful savings and loan business or savings bank business; injunction; penalty.

Sec. 322. (1) A person shall not engage in carrying on a savings and loan business as provided in this act, except a domestic association which is engaged in the business on the effective date of this act or which is organized under this act, a federal association having its principal office in this state, or a foreign association, to the extent authorized by the laws of this state. A person, unless authorized and actually engaged in carrying on a savings and loan business under this act or federal law, shall not transact business under a name or title which contains the terms “savings and loan association”, “savings association”, “thrift and loan association”, “thrift association”, “building and loan association”, “building association”, or a combination or form of those terms, or use a sign or circulate or use a letterhead, billhead, circular, or paper whatever, or advertise or represent in any manner which indicates that his or her, or its business is of the character or kind of business carried on or transacted by an association or which is calculated to lead a person to believe that his or her, or its business is that of an association.

(2) A person shall not engage in carrying on a savings bank business as provided in this act, except a domestic savings bank which is organized under this act, a federal savings bank having its principal office in this state, or a foreign savings bank, to the extent authorized by the laws of this state. A person, unless authorized and actually engaged in carrying on a savings bank business under this act or federal law, shall not transact business under a name or title which contains the term “savings bank” or use a sign or circulate or use a letterhead, billhead, circular, or paper whatever or advertise or represent in any manner which indicates that his, her, or its business is of the character or kind of business carried on, or transacted by an association, or which is calculated to lead a person to believe that his, her, or its business is that of a savings bank, except that a bank authorized to carry on a banking business may transact business under a name or title which contains the term “savings bank”.

(3) A court of competent jurisdiction may issue an injunction to restrain the person from violating or continuing to violate this section. A person who violates this section may be punished by a fine of not more than \$5,000.00.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.324 Amending articles of incorporation before issuance of certificate of authority; procedure; approval of other amendments; notice of meeting; voting on proposed amendments; adoption; execution, approval, and filing of certificate of amendment.

Sec. 324. (1) Before the issuance of a certificate of authority to commence operations, the organizers or the board of the association, as applicable, may amend the articles of incorporation by executing a certificate of amendment setting forth the amendment and certifying that the amendment was adopted by a majority of the organizers or directors of the association, as applicable, and by submitting the certificate of amendment to the supervisor for approval and filing.

(2) Other amendments to the articles of incorporation or bylaws, except as otherwise provided in this act, shall be approved by the supervisor and by the members as provided in this section.

(3) Notice of a meeting, setting forth the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member entitled to vote on the amendment within the time and in the manner provided in this act for the giving of notice of meetings.

(4) At the meeting a vote of members entitled to vote shall be taken on the proposed amendment. In the case of a mutual association, the proposed amendment shall be adopted upon receiving the affirmative vote of more than 50% of the voting power present at the meeting. In the case of a stock association, the proposed amendment shall be adopted upon receiving the affirmative vote of more than 50% of the outstanding shares entitled to vote on the amendment. The voting requirements of this section are subject to other requirements

prescribed by this act for specific amendments, or as may be provided by the association's articles of incorporation or bylaws. Any number of amendments may be acted upon at a meeting of members.

(5) Upon adoption, a certificate of amendment shall be executed setting forth the amendment and certifying that the amendment was adopted by the members under this section. The certificate shall be executed by the association and submitted to the supervisor for approval and filing.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

491.326 Members of stock association voting as class upon proposed amendment; conditions; limitations.

Sec. 326. (1) Members of a stock association holding outstanding shares of a class may vote as a class upon a proposed amendment, whether or not entitled to vote on the amendment by the articles of incorporation or bylaws, if the amendment would increase or decrease the aggregate number of authorized shares of the class, or alter or change the powers, preferences, or special rights of the shares of the class or other classes so as to affect the class adversely.

(2) If a proposed amendment would alter or change the powers, preferences, or special rights of a class so as to affect adversely 1 or more series of a class, but not the entire class, then only the shares of the 1 or more series affected by the amendment shall as a group be considered a single class for the purposes of this section.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

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491.400 Meetings of members generally.

Sec. 400. Meetings of members shall be held as provided in the association's bylaws at the principal office of the association or at another place as may be determined by the association's board. An annual meeting of members for election of directors and for the transaction of other business shall be held at the time and date provided in the association's bylaws. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or an adjournment of the meeting shall not affect an otherwise valid corporate act or work a forfeiture or give cause for dissolution of the association. Special meetings of members may be called by the board, or by officers, directors, or members as provided in the bylaws.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.402 Meetings of members; notice; waiver.

Sec. 402. Unless provided otherwise in this act, written notice of the time, place, and purpose of a meeting of members shall be given not less than 10 nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. Notice shall be given either personally, by mail, or, in the case of a mutual association only, by publication in a newspaper of general circulation in the community in which the association's principal office is located once a week for the 2 weeks immediately preceding the meeting. Unless the bylaws provide otherwise, if a meeting is adjourned to another time or place, notice of the adjourned meeting is not required if the time and place to which the meeting is adjourned are announced when the adjournment is approved and at the adjourned meeting only the business that would have been transacted at the original meeting is transacted. If the board fixes a new record date for an adjourned meeting, additional notice of the adjourned meeting shall be given to each member on the new record date entitled to notice as provided in this section. Attendance in person or by proxy at a meeting of members constitutes waiver of notice of the meeting, except if a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.404 Record date for determination of members' rights.

Sec. 404. For the purpose of determining members entitled to notice of and to vote at an annual or special meeting or at an adjournment of a meeting, or for the purpose of determining members entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action, the bylaws shall provide for fixing a date as the record date for any determination, which date shall not be more than 60 nor less than 10 days before the date of the meeting, nor more than 60 days before nor later than the date of the other action to be taken.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.406 List of members entitled to vote at meeting; requirements; noncompliance; challenge; adjournment.

Sec. 406. (1) The officer or agent having charge of the books and records pertaining to shares of a stock association shall make and certify a complete list of the members entitled to vote at a meeting, determined as of the record date prescribed by section 404. The list shall:

(a) Be arranged alphabetically and show the address of each member and the number of votes which each member is entitled to cast.

(b) Be made available at the time and place of the meeting.

(c) Be subject to inspection by any member during the whole time of the meeting.

(d) Be prima facie evidence as to the members who are entitled to examine the list or to vote at the meeting.

(2) If this section has not been complied with, on demand of a member, in person or by proxy, who in good faith challenges the existence of sufficient votes to carry any action at the meeting, the meeting shall be adjourned until this section is complied with. Inadvertent failure to comply with this section shall not affect the validity of an action taken at the meeting before a demand is made.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.408 Record of members entitled to vote at meeting; requirements.

Sec. 408. The officer having charge of the books and records pertaining to savings accounts of a mutual association shall maintain a complete record of members entitled to vote at any meeting of the association. The record shall:

(a) Be available to the presiding officer of a meeting or the officer's delegate, but the contents shall remain confidential to the extent provided by section 428(2).

(b) Be prima facie evidence as to the members who are entitled to vote at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.410 Quorum for meeting of members.

Sec. 410. (1) Unless a greater or lesser quorum is provided in the bylaws, in the case of meetings of members of stock associations, shares entitled to cast a majority of the votes at the meeting constitute a quorum at the meeting. If the holders of a class of shares of a stock association are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of holders for each class in connection with the transaction of business. Members present in person or by proxy at the meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. The meeting may be adjourned by a vote of the shares present whether or not a quorum is present.

(2) In the case of a mutual association, any number of members present in person or by proxy at a meeting constitutes a quorum at the meeting or at an adjournment of the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.412 Proxy.

Sec. 412. (1) A member entitled to vote at a meeting may authorize other persons to act for the member by written proxy. To be valid, a proxy shall be signed by the member or the member's authorized attorney-in-fact. If filed with an association, a proxy shall remain valid and continue in force from year to year, unless otherwise specified in the proxy, or until revoked.

(2) A proxy is revocable at any time upon delivery of written revocation by the member executing the proxy to the association or by subsequent execution of another proxy. Attendance and voting by a member at a meeting of members shall revoke a proxy, but only for purposes of the meeting or an adjournment of the meeting.

(3) The authority of the holder of a proxy to act is not revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of the incompetence or death is received by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.414 Inspectors; appointment; duties; report.

Sec. 414. The person presiding at a meeting of members shall appoint 1 or more officers or employees of the association as inspectors. The inspectors shall determine the existence of a quorum and the validity and effect of proxies, shall hear and determine challenges and questions arising in connection with the right to vote, shall count and tabulate votes or ballots, shall determine the result of the votes or ballots, and shall do all other acts as are proper to conduct the election or vote with fairness to all members. The inspectors shall make and execute a written report to the person presiding at the meeting of any of the facts found by the inspectors

and matters determined by the inspectors, which report shall be entered in the minutes of the meeting and shall be prima facie evidence of the facts stated and of the vote as certified by the inspectors.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.416 Voting by members.

Sec. 416. (1) In determining all questions requiring action by members of a mutual association, each depositor who is a member shall be permitted to cast 1 vote for each \$100.00 or fraction of \$100.00 of the withdrawal value of the member's savings account, to a maximum of 400 votes, or a lesser maximum number of votes as is stated in the bylaws of the mutual association.

(2) In determining all questions requiring action by members of a stock association, each outstanding share is entitled to 1 vote on each matter submitted to a vote, unless otherwise provided in the bylaws of the stock association. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws. If the articles of incorporation of a stock association provide that a class of shares shall vote as a class to authorize any action, including amendment to the articles, the voting as a class shall be in addition to any other vote required by this act. If voting as a class is provided in the articles, it shall be by the proportionate vote provided in the articles or, if a proportionate vote is not provided, then for any action other than the election of directors, by a majority of the votes cast by the holders of shares of each class entitled to vote.

(3) If the election of directors or other action is to be taken by vote of the members, the election or other action shall be authorized by a majority of the votes cast by members present in person or by proxy, unless a greater plurality is required by this act or the bylaws of an association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.418 Members voting as joint tenants, tenants in common, or fiduciaries.

Sec. 418. Shares or savings accounts held by 2 or more persons as joint tenants, tenants in common, or as fiduciaries may be voted at a meeting of members by any of the persons, unless another joint tenant, tenant in common, fiduciary, or beneficial owner seeks to vote in person or by proxy, in which case, a written agreement governing the manner in which the shares or savings accounts shall be voted controls, if presented at the meeting. If an agreement is not presented at the meeting, a majority of the joint tenants or tenants in common, or a majority of the fiduciaries who are record owners, shall control the manner of voting. If there is not a majority, the shares or savings account shall not be voted at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.420 Shares of stock association as personal property; transfer.

Sec. 420. The shares of a stock association are personal property and are transferable pursuant to article 8 of the uniform commercial code, 1962 PA 174, MCL 440.8101 to 440.8601, except as otherwise provided in this act.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 2000, Act 360, Eff. Mar. 28, 2001.

491.422 Transfer or registration of transfer of share or other security of stock association; restriction; enforcement.

Sec. 422. (1) A restriction on the transfer or registration of transfer of a share or other security of a stock association may be imposed either by its articles of incorporation or its bylaws, or by an agreement among any members or among members and the corporation. A restriction so imposed is not binding with respect to shares or securities issued before adoption of the restriction unless the members are parties to an agreement or voted in favor of the restriction.

(2) A written restriction on the transfer or registration of transfer of a share or other security of a stock association, if noted conspicuously on the instrument, may be enforced against a member or a successor or transferee of the member including an executor, administrator, trustee, guardian, or other fiduciary entrusted with similar responsibility for the person or estate of the member. Unless noted conspicuously on the instrument, a restriction is ineffective except against a person with actual knowledge of the restriction.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.424 Stock association; no preference to existing members in issuance of shares, option rights, or securities having conversion or option rights.

Sec. 424. Except as otherwise provided in the articles of incorporation or by agreement, a stock association may issue shares, option rights, or securities having conversion or option rights, without first offering them to existing members.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.426 Books, records, and minutes at principal office; accounting in accordance with supervisory rules; reproduction and disposal of records.

Sec. 426. Each association shall keep at its principal office books and records of account and minutes of the proceedings of its members, its board, and any committees of the board. Each association shall observe the accounting principles and practices, and the methods of maintaining books and records, as the supervisor may prescribe by rule or otherwise. An association shall keep at the association's principal office, or at the office of the association's transfer agent within or without this state, records containing the names and addresses of all members, and the number of shares or the amount of savings accounts held by each member. An association's books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. An association may reproduce any or all of the association's records pursuant to section 2148 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being section 600.2148 of the Michigan Compiled Laws, and may subsequently dispose of the original records.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1992, Act 202, Imd. Eff. Oct. 5, 1992.

491.428 Examination of members' minutes or records by member of record of stock association; extracts; inspection of account records by depositor; limitation; furnishing list of members to supervisor; confidentiality.

Sec. 428. (1) A member of record of a stock association, upon not less than 10 days' written demand, may examine during usual business hours, and for any proper purpose, in person or by agent or attorney, the association's minutes of members' meetings and records of members, and may make extracts from the minutes or records, at the places where the minutes or records are kept.

(2) Each depositor may inspect the books and records of an association that pertain to the depositor's savings account. Otherwise, the right of inspection and examination of the books and records is limited to the supervisor or the supervisor's authorized representative; to persons authorized to act for the association; to any governmental agency authorized to inspect or examine the books and records of an association; and to persons authorized to enter, inspect, and examine specified books and records by express action of the association's board or by a valid order of a court of competent jurisdiction. Within 2 calendar weeks after any demand made by the supervisor, a stock association shall furnish the supervisor with a list containing the name and address of each member together with the number of shares held by each member at the close of business on the date of the demand. The accounts of depositors and borrowers shall be kept confidential by the association, its directors, officers, and employees; by the supervisor, the supervisor's examiners and representatives; and by the employees of any governmental agency, except that an association may furnish information concerning the accounts of depositors and borrowers to persons subject to the fair credit reporting act, 15 U.S.C. 1681 to 1681t, and to authorized governmental agencies.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.430 Communication by member with other members of association; request for statement as to number of members and for estimate of cost; certificate of supervisor; expenses of preparation and mailing; disposition of inappropriate or untruthful communications; provisions applicable to federal associations and members thereof.

Sec. 430. If a member desires to communicate with the other members of an association with reference to a question pending or to be presented for consideration at a meeting of members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of the request, and an estimate of the cost of forwarding the communication. The requesting member shall then submit the communication to the supervisor who, if the supervisor finds the request to be appropriate, truthful, and in the best interests of the association and all its members, shall execute a certificate setting out the supervisor's findings, forward the certificate together with the communication to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's payment to the association of the expenses of the preparation and mailing. If the supervisor finds the proposed communication to be inappropriate, untruthful, or contrary to the best interests of the association and its members, the supervisor may make any disposition of the request to communicate which the supervisor considers proper and shall execute a certificate setting out the findings and deliver the certificate to the requesting member together with the supervisor's order making disposition of the request. Insofar as section 428 and this section are not inconsistent with federal law or regulations, section 428 and this section shall apply to federal associations and to members of federal associations, except that the communication provided

for in this section shall be submitted to the federal home loan bank board, and forwarded only upon the board's certificate and direction.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.432 Closing of books; annual publication of statement of condition; affidavit; public inspection of annual statements; certain associations not required to issue additional statement.

Sec. 432. Each association shall close its books at least once each year, and may do so more often if its board so elects. In addition to the annual report provided for in this act, each association not less than once during each year, shall issue a statement listing its assets and liabilities in full and showing its true financial condition as of and for the period ending at the annual closing of its books specified in this section. The statement shall be signed and sworn to by the chief executive officer of the association and a copy shall be mailed to the supervisor within 30 days after the date of the report, together with an affidavit that the statement has been published in a newspaper within the county of the principal office of the association, or instead, has been mailed to each member. The supervisor shall make all annual statements available for public inspection. An association which merges, is acquired, dissolves, liquidates, or converts to a federal savings and loan association or federal savings bank within the first 31 days immediately following the closing of the books of the association shall not be required to issue the additional statement required by this section.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.434 Board of directors; designation by organizers; qualifications; election; number; term; resignation; meetings; minutes; calling of meeting by supervisor.

Sec. 434. (1) The affairs of an association shall be managed by a board of not less than 7 directors who shall be designated by the organizers of an association before the association is authorized to commence business. Not less than 4/5 of the directors of an association shall be residents of this state, except that the supervisor may allow a waiver of this requirement if there is a merger of 2 or more associations which results from an agreement to merge to assure the financial stability of 1 or more of the merged associations. Directors shall thereafter be elected pursuant to this act at the annual meeting of members, or, if for any reason an election is not held at that meeting or at an adjournment of that meeting, then at a subsequent meeting called for that purpose of which notice is given as provided in the bylaws. Directors of a mutual association shall be members of that mutual association during their tenure of office. The number of directors shall be fixed by or in the manner provided in the bylaws of an association. If the board membership falls below the minimum number prescribed by law or otherwise, the association shall restore the board to its minimum size within 60 days. A director shall hold office until a successor is elected and qualifies, or until the director's resignation or removal. A director may resign by written notice to the association. A resignation is effective upon receipt by the association or at a subsequent time as set forth in the notice of resignation.

(2) The board shall meet not less than once each month for the purpose of carrying out the board's duties. The board shall cause to be spread upon the records of the association, in the record book which shall be kept for that purpose, the minutes of each meeting and all of the board's actions at the meeting. The minutes shall be signed by the presiding officer and the secretary of the meeting.

(3) If the supervisor considers it expedient, the supervisor may call a meeting of the board of an association for any purpose by giving notice of the time, place, and purpose of the meeting not less than 3 days before the meeting to the directors either by personal service or by registered or certified mail sent to the directors' last known addresses as shown by the records of the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.436 Regular or special meetings of board; waiver of notice; participation by conference telephone or similar equipment.

Sec. 436. (1) Regular or special meetings of the board may be held at a place and time and with the notice as is prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except if a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at, or the purpose of, a regular or special meeting does not need to be specified in the notice or waiver of notice of the meeting unless required by the bylaws.

(2) Unless otherwise restricted by the bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting under this subsection constitutes presence in person at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.438 Official communication by supervisor.

Sec. 438. Each official communication directed by the supervisor to an association or to an officer of an association that relates to an investigation or examination conducted by the supervisor or which contains suggestions or recommendations as to the conduct of the business of the association, shall be submitted by the chief executive officer to the board at the board's next meeting and the submission shall be recorded in the minutes of the board.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.440 Classification of directors as to term expiration.

Sec. 440. The bylaws of an association shall provide that the board shall be divided into 3 classes of directors, each class to be as nearly equal in number as possible. The term of office of directors in the first class shall expire at the first annual meeting of members after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class shall expire at the third annual meeting after their election. At each annual meeting after classification of the board, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the third succeeding annual meeting. If the number of directors is changed, the directors thereafter elected shall be classified under this section so that each of the 3 classes shall be as equal in number as possible.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.442 Vacancy among directors.

Sec. 442. A vacancy among directors may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term of the vacancy which was filled. In the event of a vacancy on the board for any cause, the remaining directors shall continue direction of the association until the vacancy is filled under section 434.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.444 Quorum for directors' meeting; vote constituting action of board or committee; proposed amendments to bylaws.

Sec. 444. One half or more of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transaction of business unless the bylaws provide for a larger number. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee unless the vote of a larger number is required by this act or the bylaws. Proposed amendments to the bylaws of an association by the board require the vote of not less than a majority of the members of the board then in office.

History: 1980, Act 307, Eff. Jan. 1, 198, 1981.

491.446 Written consent to action without board or committee meeting; filing; effect.

Sec. 446. Unless otherwise provided by the bylaws, action required or permitted to be taken pursuant to authorization voted at a meeting of the board or a committee of the board may be taken without a meeting if all members of the board or of the committee consent to the action in writing. The written consent shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.448 Board committees; appointment of members.

Sec. 448. Unless otherwise provided in the bylaws, the board may designate 1 or more committees consisting of 3 or more persons, 1 of whom shall be a director of the association. The board may designate 1 or more directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. The bylaws may provide that in the absence or disqualification of a committee member the members of the committee present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act in place of an absent or disqualified member. A committee and each member of a committee shall serve at the pleasure of the board.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.450 Committee; powers; prohibited authority.

Sec. 450. To the extent provided in the resolution of the board or in the bylaws, a committee of the board may exercise all powers and authority of the board in management of the business and affairs of the association. However, a committee of the board shall not:

- (a) Authorize an amendment to the articles of incorporation or bylaws.
- (b) Authorize an agreement or plan of merger, consolidation, conversion, or similar corporate change.
- (c) Authorize the sale, lease, or exchange of all or substantially all of the association's property and assets.
- (d) Authorize a dissolution of the association or the revocation of a dissolution.
- (e) Fill vacancies in the board.
- (f) Fix compensation of the directors for serving on the board or on a committee.

History: 1980, Act 307, Eff. Jan. 1, 1981.

Compiler's note: In subdivision (e), "in" evidently should read "on".

491.452 Officers of association; election or appointment; term; powers and duties.

Sec. 452. (1) The officers of an association shall consist of a president, 1 or more vice-presidents, secretary, treasurer, and, if desired, a chairperson of the board, and other officers as may be prescribed by the bylaws or determined by the board. Unless otherwise provided in the bylaws, the officers shall be elected or appointed by the board.

(2) Any 2 offices may be held by the same person except the offices of president and vice-president, but an officer shall not execute, acknowledge, or verify an instrument in more than 1 capacity if the instrument is required by law or the bylaws to be executed, acknowledged, or verified by 2 or more officers.

(3) An officer elected or appointed under this section shall hold office for the term for which the officer is elected or appointed and until a successor is elected or appointed and qualified, or until the officer's resignation or removal.

(4) An officer, as between himself or herself and other officers and the association, has the authority and shall perform the duties in the management of the association as may be provided in the bylaws or as may be determined by resolution of the board not inconsistent with the bylaws.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.454 Removal or resignation of officer; contract rights.

Sec. 454. An officer of an association may be removed by the board, or by the chief executive officer of the association if authorized by the board or the bylaws of an association, with or without cause. The removal of an officer shall be without prejudice to the officer's contract rights, if any. The election or appointment of an officer does not of itself create contract rights. An officer may resign by written notice to the association. The resignation is effective upon its receipt by the association or at a subsequent time specified in the notice of resignation.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.456 Bonding of officers, directors, and employees.

Sec. 456. Before entering upon the performance of any of their duties, each director, employee, and officer of an association shall be individually bonded with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any dishonest, fraudulent, or criminal act by the director, officer, or employee. Associations which employ collection agents who for any reason are not covered by a bond, shall provide for the bonding of agents in an amount equal to not less than twice the average monthly collection of the agent. The agents shall make settlement with the association not less than monthly. Bond coverage shall not be required of an agent which is a bank insured by the federal deposit insurance corporation or an institution insured by the federal savings and loan insurance corporation. The amount and form of the bonds and sufficiency of the surety shall be prescribed by the supervisor. Instead of individual bonds, a blanket bond, protecting the association from loss through an act on the part of the director, officer, or employee may be obtained. A true copy of every current indemnity bond shall be on file at all times with the supervisor. The bonds shall provide that a cancellation of the bonds either by the surety or by the insured shall not become effective until after 10 days' notice in writing is given to the supervisor, unless the supervisor has approved the cancellation earlier.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.458 Fiduciary relationship of directors and officers to association; conflict of interests; profits inuring to officer or director; disclosures; violation as misdemeanor; penalty; restrictions governing conduct of directors and officers.

Sec. 458. (1) Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and a director or officer shall not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association which would result in a conflict of the director's or officer's own personal interests with those of the association which the director or officer serves unless all of the following occur:

(a) The business or transactions are conducted in good faith and are honest, fair, and reasonable to the association.

(b) A full disclosure of the business or transaction and the nature of the director's or officer's interest is made to the board of directors.

(c) The business or transaction is approved in good faith by the board of directors with an interested director abstaining, which approval shall be recorded in the minutes.

(2) Any profits inuring to the officer or director shall not be at the expense of the association and shall not prejudice the best interests of the association in any way. The business or transaction shall not represent a breach of the officer's or director's fiduciary duty and shall not be fraudulent, illegal, or ultra vires. Notwithstanding any other provisions of this section, the supervisor may require the disclosure by directors, officers, and employees of their personal interest, directly or indirectly, in any business or transaction on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association. An officer, director, or employee who violates this section is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, or imprisonment for not less than 1 month nor more than 6 months, or both.

(3) The following restrictions governing the conduct of directors and officers expressly are specified, but this specification shall not be construed to excuse the directors or officers from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

(a) A director or officer shall not have an interest, directly or indirectly, in the proceeds of a loan or in a purchase, sale, or other investment made by the association, unless the loan, purchase, sale, or investment is authorized expressly by resolution approved by a vote of not less than 2/3 of the total number of directors of the association with the interested director not taking part in the vote.

(b) A director, officer, or employee of an association shall not be granted, or become the obligor on, a real estate loan from the association except for a real estate loan secured solely by an interest in the principal residence of the director, officer, or employee.

(c) A director or officer shall not have an interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account, deposit, or other indebtedness issued by the association.

(d) A director, association, or officer of an association shall not require, as a condition to the granting of a loan or the extension of any other service by the association, that the borrower or any other person enter into a contract of insurance or any other agreement or understanding with respect to the furnishing of any other goods or services, with a specific company, agency, or individual.

(e) An officer or director acting as proxy for a member of an association shall not exercise, transfer, or delegate the right in any consideration of a private benefit or advantage, direct or indirect, accruing to himself or herself nor surrender control or pass his or her office to any other person in consideration of a private benefit or advantage, direct or indirect. The voting rights of members and directors shall not be the subject of sale, barter, exchange, or similar transaction, either directly or indirectly. An officer or director who violates this subdivision shall be held accountable to the association for any benefit, advantage, or profit.

(f) A director or officer shall not solicit, accept, or agree to accept, directly or indirectly, from a person other than the association a gratuity, compensation, or other personal benefit for an action taken by the association or for endeavoring to procure the action.

(g) A director shall not receive remuneration as a director except reasonable fees for service as a director or as a member of a committee of directors. A director who is an officer or employee of or an attorney for the association may also receive compensation for services as an officer, employee, or attorney.

(4) An officer or director of an association shall not hold office or status as a director or officer of another association, the principal office of which is located in the association's lending area.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.460 Indemnification of party to action or proceeding; presumptions.

Sec. 460. An association may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the association, by reason of the fact that the person is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust,

or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or its members, and with respect to any criminal action or proceeding, did not have reasonable cause to believe his or her conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the association or the association's members, and, with respect to a criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his or her conduct was unlawful.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.462 Indemnification of party to action by or in right of association; effect of negligence or misconduct.

Sec. 462. An association may indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action by or in the right of the association to procure a judgment in the association's favor by reason of the fact that the person is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or its members. Indemnification shall not be made in respect of a claim, issue, or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the association unless and only to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.464 Indemnification against expenses actually and reasonably incurred; determination.

Sec. 464. (1) To the extent that a director, officer, employee, or agent of an association has been successful on the merits or otherwise in defense of an action or proceeding as provided in section 460 or 462, or in defense of a claim, issue, or matter in an action or proceeding, the person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred in connection with the action or proceeding.

(2) An indemnification under section 460 or 462, unless ordered by a court, shall be made by the association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in sections 460 and 462. The determination shall be made by any of the following:

- (a) By the board, by a majority vote of the directors who were not a party to the action or proceeding.
- (b) By independent legal counsel in a written opinion, if a majority vote by directors who were not a party to the action or proceeding is not obtainable, or if the directors who were not a party to the action or proceeding so decide.
- (c) By the members of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.466 Civil or criminal action or proceeding; payment of expenses in advance; undertaking.

Sec. 466. Expenses incurred in defending a civil or criminal action or proceeding as provided in section 460 or 462 may be paid by the association in advance of the final disposition of the action or proceeding as authorized in the manner provided in section 464(2) upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the amount unless it is ultimately determined that the person is entitled to be indemnified by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.468 Validity of provision to indemnify director or officer in action or proceeding; right of indemnification by contract or otherwise by law; continuation of indemnification.

Sec. 468. A provision made to indemnify a director or an officer in an action or proceeding as provided in section 460 or 462, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, shall be invalid only insofar as it is in conflict with section 460 or 462. Sections 460 to 466 and this section shall not affect a right to indemnification to which persons other than directors and officers may be entitled by contract or otherwise by law. The indemnification provided in sections 460 to 466 and this section continues as to a person who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of that person.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.470 Insurance against liability.

Sec. 470. An association may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in the capacity or arising out of his or her status as such, whether or not the association would have power to indemnify the person against liability under sections 460 to 468.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.472 Meaning of “association” in §§ 491.460 to 491.470.

Sec. 472. As used in sections 460 to 470, “association” means, in addition to an association, all constituent associations absorbed in a merger as well as the resulting association, so that a person who is or was a director, officer, employee, or agent of the constituent association or is or was serving at the request of the constituent association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise shall stand in the same position under this section with respect to the resulting association, as the person would if the person had served the resulting association in the same capacity.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

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491.500 Additional powers of association.

Sec. 500. An association organized under this act shall have all of the powers enumerated, authorized, or permitted by this act, and other rights, privileges, and powers as are incidental to those powers or reasonably necessary or appropriate to the accomplishment of the purposes of the association. In addition to those powers specifically enumerated in this act, an association may exercise the following powers:

- (a) To sue and be sued, complain, and defend in any court.
- (b) To acquire, purchase, hold, and convey real and personal property consistent with the association's objects and purposes.
- (c) To mortgage, pledge, or lease any real or personal property for the association's own use.
- (d) To take property by gift, devise, or bequest.
- (e) To have a corporate seal, which may be affixed by imprint, facsimile, or otherwise.
- (f) To appoint officers, agents, and employees as the association's business requires and allow them suitable compensation.
- (g) To provide for life, health, and casualty insurance for officers and employees and adopt and operate reasonable bonus plans and retirement benefits for those officers and employees.
- (h) To become a member of, own stock or investment certificates in, deal with, pay premiums to, or make contributions to any service corporation or safe deposit company.
 - (i) To service mortgages and land contracts.
 - (j) To originate and service mortgage loans, mortgages, and land contracts on behalf of other financial institutions, corporations, and state or federal agencies or instrumentalities.
 - (k) To operate from temporary headquarters or offices if necessary due to enemy attack or natural disaster.
 - (l) To act as fiscal agent of the United States or as a treasury tax and loan depository and perform all reasonable duties in those capacities as may be prescribed or required by regulation of the secretary of the treasury of the United States.
 - (m) To act as agent for an instrumentality of the United States, for this state, or for an instrumentality of this state.
 - (n) To act as escrow agent or depository for other escrow agents or fiduciaries for the holding of money as custodian or in trust for others.

- (o) To be a member of a federal home loan bank or its successor.
- (p) To become a member of a check clearing facility established for the purpose of facilitating the handling of negotiable checks, drafts, or withdrawal orders, and to satisfy any requirements for membership in a clearing facility.
- (q) To invest in financial options to hedge an association's interest risks.
- (r) To perform 1 or more of the following services:
 - (i) Credit analysis, appraising, construction loan inspection, and abstracting.
 - (ii) Research studies and surveys.
 - (iii) Developing and operating storage facilities for microfilm or other duplicate records.
 - (iv) Advertising, brokerage, and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts.
 - (v) Liquidity management, investment, advisory, and consulting services.
 - (vi) Establishing, owning, leasing, operating, or maintaining remote service units.
 - (vii) Purchasing office supplies, furniture, and equipment.
- (s) Provide 1 or more of the following services:
 - (i) Preparing local, state, and federal tax returns for individuals or organizations that are not corporations operated for profit.
 - (ii) Providing data processing service.
 - (iii) Other activities as the supervisor, by rule, determines to be appropriate.
- (t) To own and operate a messenger service or to own or invest in a corporation that operates a messenger service.
- (u) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.
- (v) To own an insurance agency in whole or in part as provided under Act No. 218 of the Public Acts of 1956.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 1993, Act 89, Imd. Eff. July 9, 1993;—Am. 1994, Act 382, Eff. Mar. 30, 1995.

491.502 Hours of operation; establishment; change; notice; closing of offices.

Sec. 502. An association shall establish the hours of each day during which its offices shall be open to serve the public. The established hours of each office shall be posted on the premises of the office. An association may change its established hours of operation by posting continuous and conspicuous notice of change in hours not less than 10 days before the date of the change. Each office of an association shall remain open during the established hours, except that the office may temporarily cease operations to protect the security of the office operations or the safety of employees during an emergency, in which case the office shall post notice of the cessation upon the premises. Transactions performed on the next succeeding business day following an unscheduled closing of an association due to an emergency may be considered to have been performed on the day of the closing where necessary to conform to law, rule, or court order, or to prevent a default under an agreement. An association may also close any or all of its offices during established hours on a business day to commemorate an event of special significance to the association or the community in which the office or offices are located, after posting notice of the temporary closing upon its premises.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.504 Safe deposit and storage business.

Sec. 504. An association or a service corporation may operate a safe deposit and storage business and provide proper vaults and premises for the safe deposit and storage business. The legal liability of an association or a service corporation due to a loss to a customer in connection with a safe deposit and storage business shall not exceed the sum of \$10,000.00 for a box or compartment, including all property accepted for storage outside of the box or compartment. An association or service corporation may contract with the renter to have the renter assume all risks arising from use of the box, compartment, or storage, and shall have a lien for unpaid rental and storage charges on the contents of a box or compartment. If the charges are not paid within 1 year after the date of accrual, an association or service corporation may sell the property at public auction, upon notice as is required by law for sales on execution. After retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale and the reasonable expenses of the sale, an association or service corporation shall pay the balance, if any, to the persons entitled to the balance. An association or service corporation may fairly and in good faith purchase the property, or any part of the property at the sale.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.506 Trust powers of association.

Sec. 506. Upon application to and approval by the supervisor, an association may exercise trust powers subject to the conditions, limitations, and restrictions set forth by the supervisor. The trust powers of an association may include the following:

(a) In and by its corporate name and acting as a corporate fiduciary, to take, receive, and hold, and repay, reconvey, and dispose of any effects and property, both real and personal, which may be granted, committed, transferred, or conveyed to the association with its consent, upon terms or upon a trust at any time, by any person, including minors, or bodies corporate or by a court, including a federal court, in this state, and to administer, fulfill, and discharge these trust duties for remuneration as may be agreed upon.

(b) To act generally as agent for the transaction of business; the management of estates; the collection of rents, interest, dividends, and money; the collection of principal and interest on mortgages, bonds, notes, and securities for money, and to enforce the payment thereof.

(c) To accept and to execute the offices of executor, administrator, personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of a minor, aged or infirm person, mental incompetent, or a person subject to guardianship under the laws of this state applicable to guardianship. In all cases when application is made to a court in this state for the appointment of a trustee, receiver, executor, administrator, personal representative, or guardian of a minor, aged or infirm person, mental incompetent, or any other person subject to guardianship, the court may appoint an association, with the association's consent, to hold the office. The accounts of the association as trustee, receiver, conservator, liquidating agent, assignee, administrator, personal representative, executor, or guardian shall be regularly settled and adjusted by the proper officer or tribunal. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to an association for the care and management of an estate committed to the association. In case of appointment by a court, the association shall not be required to give security except in the discretion of the court, other than as provided in section 510 for deposit with the state treasurer, and if the court orders the association to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state as surety on the bond, or with personal surety or sureties on the bond satisfactory to the court. If an association is required, in the course of the administration of a trust, to give a bond whether as additional security, substituted security, or otherwise, the surety on the bond shall not be liable directly or indirectly for an act or default committed by the association before the date of the filing and approval of the bond, for the failure of the association to pay over on final settlement, if the failure to pay over is due to an act or default committed before the filing and approval of the bond, or for the failure of the association to collect from itself or from a prior surety or sureties the amount of a loss due to an act or default committed by the association before the date of the filing and approval of the bond.

(d) To exercise by the association's board or authorized officers or agents, subject to law, all incidental powers as are necessary to carry on a trust business.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

491.508 Segregation of assets held in fiduciary capacity; books and records; keeping trust department business separate and distinct; commingling, consolidating, and depositing funds held in trust; liquidation of association or appointment of receiver or conservator; lien on securities.

Sec. 508. An association exercising trust powers under this act shall segregate all assets held in a fiduciary capacity from the general assets of the association, shall keep a separate set of books and records showing in proper detail all transactions engaged in under its trust powers, and shall keep its trust department business separate and distinct from other business operations. Funds held in trust by an association awaiting investment or other disposition may be commingled and consolidated, and may be deposited in a financial institution not affiliated with the association as designated by the association's board, or may be held by the association under a deposit relationship and used by the association in the conduct of the association's business but only to the extent and when the association sets aside for the protection of the owners of the funds, obligations of the United States, obligations that are fully guaranteed as to principal and interest by the United States, general obligations of this state or of a political subdivision of this state, or other securities approved by the supervisor equal in face amount to the amount of funds held and so used by the association, less the amounts of the funds which are insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation. In the event of a liquidation of the association or the appointment of a receiver or conservator for the assets of the association, the owners of funds held in trust awaiting investment or other disposition shall have a lien on those securities set apart, in addition to any other claim against the association.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.510 Deposit of securities with state treasurer as security for trust creditors of association; safekeeping receipt; consideration by court; certificate; interest and income; disposition of securities upon liquidation of association, appointment of receiver, or pursuant to plan of reorganization.

Sec. 510. (1) Before an association may commence exercising trust powers, the association shall deposit with the state treasurer securities of a value equal to not less than \$500,000.00, which shall be obligations of the United States, obligations which are guaranteed fully as to principal and interest by the United States, general obligations of this state or of a political subdivision of this state, or other securities approved by the supervisor. The securities so deposited shall be held by the state treasurer in trust as security for the trust creditors of the association. The state treasurer may accept instead of the actual deposit of the securities a safekeeping receipt from a qualified depository institution designated by the state treasurer, which safekeeping receipt shall acknowledge the possession of the securities and that they are held subject only to the order of the state treasurer. The existence of the deposit of securities and the amount of the deposit shall be considered by a court in connection with the requirement of the court with respect to the giving of security by the association for the discharge of the association's obligations in the execution of the office of executor, administrator, personal representative, trustee, receiver, or assignee, or guardian of a minor, incompetent person, mental incompetent, or a person subject to guardianship. Upon the deposit being made, the state treasurer shall issue a certificate of that fact, and securities or the safekeeping receipts equal in value, to be determined by the supervisor, shall remain on deposit in the state treasury. The state treasurer shall pay over to an association, as soon as collected, the interest and income received on the securities deposited or the state treasurer shall authorize the association to collect the interest and income for the benefit of the association.

(2) If an association goes into liquidation in the manner prescribed by this act, the deposit of securities shall be returned by the state treasurer to the liquidating committee or liquidating agent appointed for the association to be applied as directed by the supervisor. If a receiver is appointed, the deposit of securities shall be returned to the receiver to be applied as the circuit court may order. If pursuant to a plan of reorganization the deposit of securities is assigned by the association to a liquidating committee, liquidating trustees, or liquidating agents, or if the securities are to be liquidated by the association itself, upon written order of the supervisor, the deposit of securities shall be returned to the liquidating committee, liquidating trustees, liquidating agents, or association, to be applied under the direction of the supervisor.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

491.512 Investment of trust funds.

Sec. 512. Trust funds received by an association and available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or defining the trust or other holding and, unless otherwise specified in the agreement, instrument, or order, may be invested in the same manner as an individual acting in a similar capacity may invest trust funds under the laws of this state. Trust funds shall not be invested in securities or other properties, real or personal, purchased from the association or from any of the association's affiliates.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

491.513 District bank of federal home loan bank system as trustee or custodian; powers; books and records; commingling investment funds.

Sec. 513. A district bank of the federal home loan bank system may serve as trustee or custodian and exercise trust powers with respect to any account or accounts within the contemplation of the self-employed individuals tax retirement act of 1962, Public Law 87-792, 76 Stat. 809, and the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829, and as trustee, custodian, or manager of an investment fund the authorized investments of which includes savings accounts or real estate loans, and the beneficial interests which may be represented by transferable shares or certificates, where an association or a federal association serves as the depository for that account or investment fund. A district bank exercising the limited trust powers provided in this section shall keep separate books and records detailing the transactions made for each distinct investment fund held in a fiduciary capacity and for each beneficial owner's interest in the fund, and may commingle the investment funds held in a fiduciary capacity for purposes of investment.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981.

491.514 Borrowing.

Sec. 514. An association may borrow money from any source for any of the association's corporate purposes, when authorized by the board of the association. An association may assign or pledge any of its assets or properties as collateral security for borrowings for any of its corporate purposes.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.515 Brokerage services; rules; “securities” defined.

Sec. 515. (1) Subject to the applicable state or federal law, an association or a service corporation established by an association may provide brokerage services for the offer, sale, or purchase of securities or commodity contracts. The commissioner may promulgate rules to clarify and enforce this section.

(2) For the purposes of this section, “securities” means securities as defined pursuant to section 401 of the uniform securities act, Act No. 265 of the Public Acts of 1964, being section 451.801 of the Michigan Compiled Laws.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.516 Capital notes, bonds, or debentures; issuance and sale; requirements; unsecured indebtedness; subordination to claims of depositors or general creditors; status in liquidation; statement of rights and priorities of lenders; inclusion in net worth.

Sec. 516. An association may issue and sell its capital notes, bonds, or debentures with the prior approval of the supervisor and subject to any sinking fund or other conditions the supervisor may impose. In addition, a stock association shall obtain the prior approval of members owning more than 50% of the issued and outstanding shares of voting stock of the association to issue convertible capital notes, bonds, or debentures. Capital notes, bonds, and debentures shall be an unsecured indebtedness of the association and shall be subordinate to the claims of depositors and other general creditors of the association, regardless of whether the claims of depositors or general creditors arose before or after the issuance of capital notes, bonds, or debentures. In the event of liquidation, all depositors and other general creditors of the association shall be paid in full before a payment is made on the principal or interest on capital notes, bonds, or debentures. Capital notes, bonds, and debentures shall contain a statement of the rights and priorities of the lenders. The amount of outstanding capital notes, bonds, or debentures legally issued by an association shall be included in the net worth of the association for purposes of this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.518 Shares of capital stock without voting rights; authorization and issuance.

Sec. 518. With the approval of the supervisor, a mutual association or a stock association may authorize and issue shares of capital stock without voting rights and which have other rights, preferences, and characteristics that are permitted by rules promulgated by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.520 Operation of association from principal office; branch office or agency; remote service unit; moving branch office or agency.

Sec. 520. An association shall be operated from its principal office located in this state. All branch offices, agencies, and other facilities shall be subject to direction from the principal office. An association shall not establish a branch office or agency for transacting business without prior approval of the supervisor. An association may establish and operate a remote service unit in accordance with Act No. 322 of the Public Acts of 1978, without prior approval of the supervisor. Except for a mobile branch, a branch office or agency of an association shall not be moved without approval of the supervisor as provided in section 522.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1993, Act 89, Imd. Eff. July 9, 1993.

491.522 Branch office; establishment or relocation; application; notice; examination or investigation; oral argument; approval; announcement of decision; revocation of approval; request for extension; establishment of mobile branch.

Sec. 522. (1) Except as otherwise provided in subsection (4), an association shall not establish or relocate a branch office for the transaction of business without application to and approval by the supervisor. Within 10 days after acceptance of an application for permission to establish a branch office, the supervisor shall send written notice of the application by mail to the principal office of each association and federal association. The supervisor shall make an independent examination or investigation of each branch application, and in furtherance of the investigation, may cause oral argument to be heard concerning the application within 60 days after receipt of an application. The conduct of the oral argument shall conform to rules promulgated by the supervisor and shall not be subject to the administrative procedures act of 1969, Act No. 306 of the Public

Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) If it appears that the proposed branch office has a reasonable probability of success and that the net worth of the association is adequate with respect to the general operating policies and financial condition of the association, the supervisor shall approve and file the application with the date of filing indorsed on the application and shall announce a decision concerning the application within 90 days after acceptance of the application. The supervisor also shall file in the supervisor's office a written memorandum stating the reasons supporting the decision, which memorandum shall be available for public inspection pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) If the branch office authorized is not established within 6 months after the date authority is granted, the approval shall be revoked automatically unless a written request for an extension is made to the supervisor not less than 10 days before termination of the 6-month period and the supervisor grants the extension.

(4) An application to establish a mobile branch shall contain a statement by the applying association that it intends to move the location of the physical structure of the branch office from time to time. A branch office established pursuant to this subsection shall be considered a mobile branch from the date the application is approved by the supervisor. The supervisor shall not require advance notice of or a schedule showing the location of a mobile branch.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1993, Act 89, Imd. Eff. July 9, 1993.

491.524 Agent of association; activities; procedures; record of business transacted; report.

Sec. 524. An agent of an association may carry out the activities which are authorized by rule of the supervisor. The establishment of an agency by an association shall be subject to the procedures which shall be required by rule of the supervisor. Each agent of an association shall keep a record of business transacted for the association and shall promptly report to the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.526 Net worth structure.

Sec. 526. Each association shall maintain an adequate net worth structure appropriate for the conduct of its business and the protection of its depositors. As determined by the supervisor, the net worth adequacy of an association shall be analyzed and appraised in relation to the character of its management, the liquidity of assets, history of earnings and of the retention thereof, the potential volatility of the deposit structure, and the association's capacity to furnish the broadest service to the public.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.528 Interest or no interest on deposit accounts; classification of accounts; different rates.

Sec. 528. An association may pay interest on deposit accounts at the rate and time, for the time or notice period, and upon the terms and conditions as are determined by the written agreement between an association and the depositor. An association may classify deposit accounts according to the character, amount, or duration of the account or the regularity of additions to the account, and may agree in advance to pay a different rate of interest, or not to pay interest, on 1 or more of the classes of deposit accounts based on the classification, if all depositors within each class of accounts are treated equally for purposes of receiving interest.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.530 Cash dividends on common stock; restrictions; dividends on preferred stock.

Sec. 530. (1) The board of a stock association may declare and pay cash dividends on outstanding shares of common stock subject to the following restrictions:

(a) A dividend shall not be declared or paid unless the association has combined retained earnings and capital in excess of par amounting to not less than 20% of stated capital after payment of the dividend.

(b) A dividend shall be declared or paid only from either the association's net income or from retained earnings. All debts due the association on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection, or the debts constitute claims against solvent estates in probate, shall be considered bad debts within the meaning of this section.

(2) As used in this section "net income" means the remainder of all earnings from operations plus actual recoveries on loans and investments and other assets previously charged off, after deducting from the total all operating expenses, actual losses, accrued dividends on preferred stock, accrued interest on capital notes,

bonds, or debentures, all taxes, and recognizing extraordinary gains and losses.

(3) An association may pay dividends on the preferred stock of the association at the rate as may be applicable notwithstanding the limitations of this section.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.532 Increasing capital stock by stock dividend; conditions; certificates required.

Sec. 532. A stock association with the approval of the supervisor may increase its capital stock by declaration of a stock dividend with respect to the capital stock. After the increase, the combined capital in excess of par and retained earnings of the association shall be at least equal to 20% of the association's stated capital as increased. An increase shall not be effective until a certificate of the declaration of dividend, signed by an executive officer of the association, and acknowledged before a notary public is transmitted to the supervisor and the supervisor's certificate is obtained specifying the amount of the increase of capital stock by stock dividend and the supervisor's approval of the increase.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 6

491.600 Savings liability; relationship between association and depositor; nonliability of depositor; depositor preference; contract with depositor.

Sec. 600. The savings liability of an association shall consist of the aggregate amount of deposits made in the association's savings accounts, and shall be unlimited in aggregate amount. The relationship between an association and a depositor is that of debtor and creditor, respectively. Depositors shall not be subject to assessment by reason of their ownership of a savings account, nor shall they be liable for an unpaid installment on a savings account or a loss of the association that the association's savings liability is not sufficient to satisfy. Except as otherwise provided in this act, an association shall not prefer 1 of its depositors over any other as to the right to receive interest, to participate in earnings, to be granted security for deposits, or to receive a distribution of assets upon voluntary or involuntary liquidation, dissolution, or other termination of business activities. An association shall not contract with depositors with regard to the association's savings liability in a manner inconsistent with this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.602 Contract as evidence of savings account; contents; evidence of ownership.

Sec. 602. Each savings account shall be evidenced by a written contract between the association and the depositor that shall set forth the terms and provisions applicable to the savings account, the ownership of the savings account, and the conditions upon which withdrawal may be made. An account book, certificate, or other evidence of a savings account issued by the association to each depositor shall be conclusive evidence of the ownership of the savings account.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.604 Evidence of ownership of savings account; loss or destruction; affidavit; issuance of new evidence or substitution of new account; nonliability on original evidence of ownership; bond or other security as indemnification.

Sec. 604. Upon the filing with an association or a federal association of a sworn affidavit to the effect that the evidence of ownership of a savings account has been lost or destroyed and that the account has not been pledged or assigned in whole or in part, the association or federal association, unless it has actual knowledge that the facts set forth in the affidavit are untrue, shall either issue new evidence of ownership for an account or arrange for the substitution of a new account in the name of the depositor in place of the account for which the evidence of ownership has been lost or destroyed. The association or federal association may require that the affidavit be furnished by all owners of an account. Upon issuance of the substitute evidence or the substitution of accounts, the association or federal association shall not thereafter be liable on, or obligated to honor, the original evidence of ownership. An association or federal association may require a bond or other security as the association or federal association considers sufficient to indemnify the association against any loss which may result from issuance of the substitute evidence of ownership or the substitution of accounts.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.606 Types of savings accounts; contract for issuance; transaction charges.

Sec. 606. An association or a federal association may contract for the issuance of the following types of savings accounts, which may be subject to the transaction charges as the association's board prescribes:

(a) Accounts under which the association is trustee or custodian within the contemplation of the self-employed individuals tax retirement act of 1962, Public Law 87-792, 76 Stat. 809, and the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829, and as trustee, custodian, or manager of an investment fund the authorized investments of which includes, savings accounts or real estate loans, and the beneficial interests which may be represented by transferable shares or certificates. An association exercising the limited trust powers provided in this subdivision shall keep separate books and records of the detailed transactions made for each distinct investment fund held in a fiduciary capacity and for each beneficial owner's interest in the fund, and may commingle the investment funds held in a fiduciary capacity for purposes of investment. A fund held in a fiduciary capacity shall not be used by an association in the conduct of its business, although the funds may be invested in savings accounts of the association if the trust, plan, or other governing instrument does not prohibit that investment. In the exercise of the trust powers authorized by this subdivision, an association shall be exempt from all other statutes of this state regulating trusts or trustees.

(b) Accounts for issuance to federal, state, political subdivision, other governmental units or agencies, school districts, or other authorities created by statute in connection with the deposit of public or state money or federal taxes. Depositors of public or state money or federal taxes shall not be considered members of an association. An association or federal association may contract with the depositor of public or state money or federal taxes to provide for the withdrawal of public or state money or federal taxes without previous notice of withdrawal. An association or federal association, with the written consent of the supervisor or under rules promulgated by the supervisor, may pledge its assets in an amount not to exceed 10% of the association's savings liability to secure deposits by or for the credit of any of the following:

(i) The United States or any officer, instrumentality, or agency of the United States.

(ii) The courts of the United States or any trustee or receiver acting under authority granted by the courts of the United States.

(iii) The state treasurer.

(iv) The Mackinac bridge authority under 1950 (Ex Sess) PA 21, MCL 254.301 to 254.304.

(v) The international bridge authority under 1954 PA 99, MCL 254.221 to 254.240.

(vi) The Michigan state housing development authority under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(vii) The Michigan employment security commission.

(viii) Funds belonging to any political subdivision of this state.

(c) Accounts under which the association may participate and implement a thrift or savings plan at a public or nonpublic elementary or secondary school or institution of higher education, a public or charitable institution caring for minors, or an institution or facility engaged in housing or caring for the aged or infirm. An association may accept deposits to the savings accounts at the site of a school, institution, or facility either by the association's own employees or by a representative of the school, institution, or facility who is designated as the association's agent for that purpose, without prior approval by the supervisor.

(d) Accounts of the classification, in the form, and under the terms and conditions as may be established, and which may provide for the transfer of funds from the account to third parties upon order or authorization, which third party transfer orders or authorizations shall be nonnegotiable. An association may provide that an order or authorization for withdrawal or transfer of funds from an account to third parties may be negotiable or transferable.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 1997, Act 51, Imd. Eff. June 30, 1997.

491.608 Application for withdrawal of money from savings account; identification; cancellation; payment or numbering of application; interest; rotation plan; amount of payment; notice; pro rata payments; payment without application; apportionment of funds; definition.

Sec. 608. (1) Unless a rotation plan has been approved by the supervisor under this section, a depositor may withdraw all or part of the money from a savings account, pursuant to the terms applicable to withdrawals under the written contract between a depositor and the association. An association may require that each application for withdrawal be accompanied by identification considered sufficient by the association to assure that the withdrawal is being made by a person entitled to do so. An application for withdrawal shall request withdrawal of a stated amount or the balance of the account pursuant to this section. A depositor may cancel an application at any time in whole or in part by providing written notice to the association. An association shall pay or number, date, and file in the order of actual receipt, every withdrawal application. An association shall not obligate itself to pay withdrawals on a plan other than as provided in this act. Depositors

who are members and who have filed written application for withdrawal remain members until paid, and shall not have greater rights as creditors. Interest shall not be paid upon that portion of an account which has been noticed for withdrawal, and a portion noticed for withdrawal shall be deducted from the latest previous additions to an account, if the application for withdrawal is on file.

(2) If action is necessary to preserve the assets of an association and protect the claims of the association's depositors, with the approval of the supervisor an association may institute a rotation plan for the payment of withdrawal applications pursuant to this section with respect to savings accounts other than those authorized by section 606(b). A rotation plan pursuant to this section may also be required of an association upon issuance of an order for a rotation plan by the supervisor. On the first day of each month, each application that has been on file since the fifteenth day of the preceding month and which is reached in the order the application was received shall be paid \$1,000.00 on account if funds are available for that purpose, or in full if the unpaid amount or balance of the withdrawal application is less than \$1,000.00. Each application for more than \$1,000.00 so paid, shall be considered refiled for purposes of the succeeding monthly payments. Not less than 1/3 of the net receipts of an association during the preceding calendar month shall be applied on the first day of each month to the payment of applications under the rotation plan. An association may apply to withdrawals an amount larger than 1/3 of the net receipts, but shall not obligate itself to do so. When an application to withdraw is reached for payment, a written notice shall be sent to the applicant by mail at the applicant's last address recorded on the books, and unless the applicant applies in person or in writing for the withdrawal within 15 days after the date of the notice, payment on account of the application shall not be made and the application shall be canceled. If the aggregate sum called for by applications for withdrawal on file exceeds 5% of the savings liability of the association, the association's board may direct, with the approval of the supervisor, that the sums available each month for payment upon withdrawals shall be paid by distribution of the sums to the withdrawing depositors in proportion to their savings account to be withdrawn.

(3) At the discretion of the board and to meet the necessities of the association's depositors, an association may pay out to depositors who have not filed applications for withdrawal an amount not to exceed \$200.00 to a depositor in a month, but the payments shall not be made from or charged against the 1/3 of net receipts applicable to the payment of written applications for withdrawal.

(4) With the approval of the supervisor the board may provide that all funds available for withdrawal shall be apportioned and paid pro rata with respect to all unpledged savings accounts of an association, without regard to applications for withdrawal and the sums may be distributed as determined by the board, but not less than 2 times a year.

(5) As used in this section, "net receipts" means the cash received by an association from investments, interest, loan repayments, fines, service charges, and any other source except borrowings, deposits, and payments which are to be held in escrow or as agent for another, less disbursements for expenses necessary and incidental to the association's business, expenses of maintaining and improving its real estate, taxes and insurance related to its properties or business, renewals of obligations, interest payments to depositors and other lenders to the association, and the creation of required reserves.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.610 Redemption of savings accounts.

Sec. 610. If sufficient funds are on hand, an association may redeem all or part of its savings accounts which by the terms of the governing written contract permit the action, by giving 30 days' notice by certified mail addressed to depositors at their last address on the books of the association. An association shall not redeem a savings account if the association is in an insolvent condition or if the association has applications for withdrawal that have been on file for more than 30 days and which have not been honored. The redemption amount for savings accounts shall be the full value of the account on the redemption date together with any interest to which a depositor is entitled under the savings contract with the association. If funds are set aside by the association on or before the redemption date for the purpose of redemption under this section so as to be continuously available for redemption, interest on savings accounts called for redemption shall cease to accrue and all other rights and privileges otherwise provided to depositors, as members and otherwise, shall terminate on the redemption date, except the right of the depositor to receive the redemption amount and any interest to which the depositor is entitled.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.612 Opening and holding of savings accounts; representation of savings account; treating depositor as owner of funds; evidence of identity.

Sec. 612. A savings account may be opened by an association or a federal association and held solely and absolutely by, or in trust for, any person, including an adult or minor individual, male or female, single or

married, a partnership, association, or corporation. A savings account may be opened and held by this state or a political subdivision of this state, or by an officer or agency of this state or a political subdivision of this state for any purpose permitted by law. A savings account shall be represented only by the account of each depositor on the books of the association. An association or a federal association may treat a depositor as the owner of the funds for all purposes without being affected by a notice to the contrary until the association has acknowledged in writing notice of a pledge or assignment of the savings account. If an account is to be opened in the name of 1 or more individuals, an association or federal association may require evidence that the association or federal association considers sufficient to assure itself of a prospective depositor's identity.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.614 Issuance of savings account to minor; rights of minor; death of minor.

Sec. 614. An association and a federal association may issue a savings account to a minor as the sole and absolute owner of the account, and pay withdrawals and act with respect to the account on the order of the minor. Unless the written savings account contract provides otherwise, a payment or delivery of rights to a minor by an association or a federal association, or a receipt or acquittance signed by a minor who is a depositor, shall be a valid and sufficient release and discharge of the association for any payment or delivery of rights so made. The receipt, acquittance, or other action required by the association to be taken by the minor, and any action taken by a minor to pledge, or grant a power of attorney with respect to, an account shall be binding upon the individual with the same effect as if the minor were of full legal capacity. The parent or guardian of a minor shall not, in the person's capacity as parent or guardian, attach or in any manner transfer a savings account issued to or in the name of the minor. In the event of the death of a minor, the receipt or acquittance of either parent, or of a person standing in loco parentis to the minor is a valid and sufficient discharge of an association for any sum not exceeding in the aggregate \$3,000.00 unless the minor has given written notice to the association not to accept the signature of the parent or other person.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.616 Joint savings account; contract; nature of joint tenancy; power of depositors; instructions; discharge of association from liability.

Sec. 616. (1) One or more individuals may open a savings account with an association or a federal association in the names of 2 or more minor or adult individuals. The savings account contract executed with an association or federal association shall do all of the following:

(a) Designate that the money on deposit in the account may be withdrawn by 1 or more of the depositors during the lifetimes of all of them.

(b) Specify that the account and all additions to the account shall be the property of the depositors as joint tenants, tenants by the entireties, or as tenants in common.

(2) If specification is not made in the savings account contract concerning the nature of the joint tenancy created, the account and all additions to the account shall be the property of the persons as joint tenants, and in the absence of fraud or undue influence, the opening of an account shall be conclusive evidence in an action or proceeding of the intention of all parties to the account to vest title to the account and all additions to the account in the survivor.

(3) The power of the depositors, or any 1 or more of them to obtain substitute evidence of the savings account or a substituted account upon loss or destruction of the evidence of ownership of the account, to pledge the account in whole or in part, and to execute a power of attorney with respect to the account shall be coextensive with the right of the depositors to make withdrawals from the account during the time all depositors to the account are living. By written instructions given to the association by a depositor to an account, the signatures of a named depositor or of more than 1 of the depositors during their lifetimes or of a named depositor or of more than 1 of the surviving depositors after the death of any 1 of them may be required on a check, receipt, or withdrawal application, in which case the association shall pay the money in the account only pursuant to the instructions. Payment of all or any of the money in a joint account shall discharge the association from liability with respect to the money paid, before the association's receipt of written instructions from a depositor directing the association not to permit withdrawals pursuant to the terms of the account or the instructions. After receipt of the written instructions, an association may refuse, without liability, to honor a check, receipt, or withdrawal order on the account pending determination of the rights of the parties. Written instructions given to an association regarding a joint account shall not affect a right of survivorship on the account unless the instructions specifically state otherwise.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.618 Pledge of joint account.

Sec. 618. The pledge to an association or a federal association or any other third party of all or part of a joint account signed by a person who is authorized in writing to make withdrawals from the account, unless the terms of the savings account provide specifically to the contrary, is a valid pledge and transfer to the association or other third party of that part of the account pledged, and shall not operate to sever or terminate the joint ownership of all or a part of the account.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.620 Nonresident depositor; payment of account to administrator, personal representative, executor, or guardian; letters of administration; affidavit; release and discharge of association.

Sec. 620. If a depositor in an association or a federal association resides in another state or country, the account or a part of the account, may be paid to an administrator, personal representative, or executor appointed in the state or country where the depositor resided at the time of death, or to a duly appointed guardian for the estate of the depositor if the depositor is still living, if the administrator, personal representative, executor, or guardian has furnished the association with authenticated copies of the letters of administration authorizing the person to act as fiduciary of the estate of the depositor and to collect and receive the depositor's estate, together with a sworn affidavit by the fiduciary that to his or her knowledge letters of administration are not outstanding in this state and a petition for letters of administration by an heir, legatee, devisee, or creditor of the nonresident depositor is not pending regarding the estate in this state, and that there are not any creditors of the estate in this state. Upon payment or delivery to the fiduciary acting on behalf of a nonresident depositor, the association shall be released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor, administrator, personal representative, or other fiduciary, and the association shall not be required to see to the application or disposition of the property.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.622 Savings account in name of fiduciary in trust for named beneficiary or in name of nominee or escrow agent; powers of record owner; payment or delivery; release and discharge; death of fiduciary; payment or delivery to beneficiary or beneficiary's estate; death of trustee; payment or delivery to designated beneficial owner.

Sec. 622. An association or a federal association may accept savings accounts in the name of an administrator, personal representative, custodian, executor, guardian, trustee, or other fiduciary in trust for a named beneficiary or in the name of a nominee or an escrow agent. The record owner shall have all powers with respect to the account as if the account were owned by the record owner absolutely, to open, to make additions to, and to withdraw funds from the account in whole or in part. The withdrawal value of the account, and interest on the account, or other rights relating to the account may be paid or delivered, in whole or in part, to the fiduciary without regard to any notice to the contrary if the fiduciary is living. The payment or delivery to the fiduciary or a receipt or acquittance signed by the fiduciary to whom a payment or delivery of rights is made is a valid and sufficient release and discharge of an association for the payment or delivery made. If a person holding an account in a fiduciary capacity dies and written notice of the revocation or termination of the fiduciary relationship has not been given to an association and the association does not have notice of any other disposition of the beneficial estate, the withdrawal value of the account, and interest on the account, or other rights relating to the account, at the option of the association, may be paid or delivered, in whole or in part, to the beneficiary or, if the beneficiary has also died, to the beneficiary's estate. If an account is opened by a person, describing himself or herself in opening the account as trustee for the benefit of another person and other or further notice of the existence and terms of a legal and valid trust has not been given in writing to the association, in the event of the death of the person described as trustee, the withdrawal value of the account or a part of the account, together with dividends or interest on the account, may be paid to the beneficial owner for whom the account was stated to have been opened, and the account and all additions to the account shall be the property of the beneficial owner. Payment or delivery to a designated beneficial owner, or a receipt or acquittance signed by a designated beneficial owner, is a valid and sufficient release and discharge of an association for the payment or delivery made.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.624 Attorney-in-fact; recognition of authority; notice of revocation of authority.

Sec. 624. An association or a federal association may recognize the authority of an attorney-in-fact, authorized in writing by a person who has power to make withdrawals from a savings account, including a

fiduciary of a depositor, until the association receives written notice or is on actual notice of the revocation of the authority from a person who previously granted the authority. For purposes of this section, written notice of the death or adjudication of incompetency of a depositor constitutes written notice of revocation of the authority of the depositor's attorney-in-fact.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.626 Savings accounts as legal investments.

Sec. 626. Savings accounts of associations and federal associations are legal investments for administrators, personal representatives, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies and other businesses, banks, credit unions, and all other types of financial institutions, charitable, educational, and eleemosynary corporations or organizations, political subdivisions, state agencies, other governmental units, and other corporations and bodies.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.628 Savings accounts subject to garnishment or similar process; payment pursuant to action or judgment.

Sec. 628. Savings accounts of associations shall be subject exclusively to garnishment and shall not be subject to seizure and sale on execution, or proceedings supplementary to those proceedings, but an amount in a savings account which is \$500.00 or less shall not be liable to garnishment or a similar process, except as to an indebtedness due to the association. Without inquiry into the validity of a garnishment or similar process, an association may pay any funds in excess of \$500.00 in a savings account into a court or to a qualified official making demand for the funds, pursuant to an action or on a judgment pursuant to an action.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.630 Repealed. 1987, Act 106, Imd. Eff. July 7, 1987.

Compiler's note: The repealed section pertained to statement as to insured or guaranteed accounts.

ARTICLE 7

491.700 Investment of funds; venture capital investments; other lending or investment powers not limited; definitions; approval of investments in other categories by commissioner.

Sec. 700. (1) Subject to rules promulgated by the commissioner, an association may invest its funds in the following categories of assets:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, or for which annual contributions to be paid under contract by the United States or any of its instrumentalities under the national housing act, 12 U.S.C. 1701 to 1750g, are pledged for payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Obligations of a school district or political subdivision of this state.

(e) Bankers' acceptances eligible for purchase by federal reserve banks and any corporate obligations approved for investment purposes by the supervisor.

(f) Stock, bonds, or other obligations of a federal home loan bank, the federal savings and loan insurance corporation, the federal deposit insurance corporation, a corporation or agency of the United States or of this state to the extent that the corporation or agency requires the investment as a means of furthering or facilitating an association's purposes, and any service corporation, partnership, or other organization approved by the supervisor that assists in furthering or facilitating an association's purposes.

(g) Demand, time, or savings deposits or accounts or other obligations of a financial institution the accounts of which are insured by a federal agency or instrumentality.

(h) Under a plan approved by the supervisor, savings accounts or certificates of deposit with banks whose deposits are recognized by the federal home loan bank board for liquidity purposes.

(i) Shares or certificates in any open-end management investment company registered with the securities and exchange commission under the investment company act of 1940, chapter 686, 54 Stat. 789, while the portfolio of the company is restricted by its investment policy, changeable only by vote of the shareholders, to investments eligible for liquidity pursuant to federal home loan bank board regulations.

(j) Stock, bonds, or other obligations of any business and industrial development corporation licensed and supervised by this state.

(k) Small business investment companies formed under section 301(d) of the small business investment company act of 1958, 15 U.S.C. 681.

(l) A finance subsidiary wholly owned by 1 or more associations whose sole purpose is to issue debt or equity securities of the type that the association is authorized to issue directly, or, if a mutual association, would be authorized to issue if it converted to stock form, and to remit the net proceeds of such issuance to the association.

(m) Any class of voting securities of a bank organized and chartered under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, and engaged exclusively in providing services to depository institutions or their officers, directors, and employees, or a bank holding company that owns or controls a bank organized and chartered under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, the national bank act, chapter 106, 13 Stat. 99, if the stock of a bank holding company is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions, as defined in the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, and if all subsidiaries of the company engaged exclusively in serving depository institutions or their officers, directors, and employees. The amount of securities of a bank or bank holding company held by an investing association shall not exceed 20% of the net worth of the investing association.

(2) Subject to the limitations contained in this act, an association may make venture capital investments or may invest in equity securities of a professional investor a majority of whose assets consist of venture capital investments.

(3) If an association makes a venture capital investment under subsection (2), an officer or director of the association shall not hold an equity position in the financed company, and the association shall own less than 50% of such company.

(4) An association's investment pursuant to subsection (2) in any 1 entity shall not exceed an amount equal to 5% of the net worth of the association, and all investments under subsection (2) shall not exceed an amount equal to 10% of the net worth of the association.

(5) This section does not limit the authority of an association to exercise lending or investment powers that are otherwise authorized by law.

(6) As used in this section:

(a) "Professional investor" means an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 to 80a-64, a pension or profit sharing trust or other institutional buyer, or a person, partnership, or other entity a majority of whose resources is dedicated to investing in equity or debt securities and whose net worth exceeds \$500,000.00 prior to the association's investment.

(b) "Venture capital" means equity financing that is provided for starting up or expanding a company, or related purposes such as financing for seed capital, research, and development; introduction of a product or process into the marketplace; or similar needs requiring risk capital. A venture capital investment shall not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are registered on a national securities exchange under section 12(b) of title I of the securities exchange act of 1934, 15 U.S.C. 78l; that are registered or required to be registered under section 12(g) of title I of the securities exchange act of 1934, 15 U.S.C. 78l; or which would be required to be so registered except for the exemptions in section 12(g)(2) of title I of the securities exchange act of 1934.

(7) The commissioner is authorized to approve investments in other categories of assets that the commissioner determines are consistent with this act. Those investments shall be subject to limitations as determined appropriate by rule of the commissioner.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 2000, Act 365, Imd. Eff. Jan. 2, 2001.

Administrative rules: R 491.101 et seq. of the Michigan Administrative Code.

491.702 Real estate loans and land contracts; making or purchasing; limitations; security; provisions and recordation of security instruments; extension or renewal of real estate loan or contract; interests in real estate upon which association may lend money.

Sec. 702. (1) Subject to rules promulgated by the supervisor, an association or a federal association may make or purchase real estate loans and land contracts pursuant to this section.

(2) A real estate loan or land contract shall not be originated or purchased by an association in excess of 90% of the current appraised value of the real estate secured, nor shall any real estate loan be made where the total of all loans secured by the real estate exceeds 90% of the current appraisal value of the real estate, except

in the following instances:

(a) The total of the real estate loan and all other loans senior to the loan secured by the real estate may equal not more than 100% of the current appraised value of real estate, if either of the following occurs:

(i) Repayment of the real estate loan or land contract is insured or guaranteed in an amount not less than 10% of the loan by the United States or this state, by an agency or instrumentality of either of them, by any other private corporation approved by the supervisor, or under the provisions of the national housing act, 12 U.S.C. 1701 to 1750g, or the veteran's housing amendments act of 1976, Public Law 94-324, 90 Stat. 720.

(ii) The association establishes and maintains a specific reserve with respect to the real estate loan equal to 1% of the unpaid principal balance of the loan until the unpaid principal balance has been reduced to 90% of the current appraised value.

(b) The total of the real estate loan and all other loans senior to the loan secured by the real estate may equal not more than 95% of the current appraised value of real estate, if the real estate is improved or will be improved by a dwelling in which the borrower in good faith intends to reside.

(3) Each real estate loan shall be secured by a mortgage or other security instrument constituting a lien upon the real estate securing the loan. If a loan is secured by a leasehold interest the borrower shall agree to repay the loan within the leasehold term and to subrogate to the association all rights of the lessee under the leasehold. All security instruments shall provide the association with full protection with respect to loan and additional advances, the usual insurance risks, taxes, assessments, governmental levies, maintenance, and repairs, and may provide for an assignment of rents that shall be absolute upon the borrower's default and become operative upon demand of the association. All security instruments shall be recorded as provided by law.

(4) An association shall not extend or renew a real estate loan made or a contract purchased under this section if, as renewed or extended, the loan or contract fails to comply with the limitations and provisions of this section at the time of the renewal or extension.

(5) For purposes of this section, a certificate of stock or other evidence of ownership in, or a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real estate, and in interest in a condominium dwelling unit constitute interests in real estate upon which an association may lend money.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981.

491.702a Property/casualty insurance as condition to loan; limitation on amount required; amount as condition of sale, transfer, or assignment.

Sec. 702a. (1) Except as provided in subsection (2), an association or federal association that requires a mortgagor to maintain property/casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property/casualty insurance to be greater than the replacement cost of the mortgaged building or buildings.

(2) An association may require an amount of property/casualty insurance that is required of the association as a condition of a sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the association anticipate a sale, transfer, or assignment at the time the mortgage loan is made.

History: Add. 1995, Act 199, Imd. Eff. Nov. 29, 1995.

491.704 Additional types of loans association may make or purchase; limitation.

Sec. 704. (1) In addition to real estate loans permitted under section 702, an association may make or purchase the following types of loans:

(a) Loans for which repayment has been wholly or partially guaranteed or insured by the United States or this state or an agency of the United States or this state.

(b) Loans made to finance the purchase of mobile homes for use as a residential dwelling or for resale to others in the ordinary course of the borrower's business.

(c) Loans made for the purpose of paying expenses of higher education, for maintaining, repairing, modernizing, altering, landscaping, improving, constructing, furnishing, or equipping of real estate properties or for purposes not otherwise authorized by this act. The aggregate of all unsecured loans made pursuant to this subdivision to any 1 borrower shall not exceed 1/4 of 1% of the association's assets, 5% of the association's net worth, or \$15,000.00, whichever is greater. The loans may be made by a service corporation and may also be made pursuant to an existing credit card arrangement or other agreement existing before the loan whereby the association or the service corporation honors the borrower's draft, pays or agrees to pay the borrower's obligations, purchases the borrower's obligation, or advances money to or for the account of the borrower. If the loan is secured by a lien or interest in real estate, the loan shall not be subject to the

percentage of appraised value tests applicable to real estate loans under section 702(2). Loans made under this subdivision on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection, or the debt constitutes a claim against solvent estates in probate, shall be charged off at the expiration of the 6-month period.

(d) Loans on the sole security of a savings account with the association to the extent of the withdrawal value of the savings account.

(e) Loans secured by time or savings deposits or accounts in a financial institution the accounts of which are insured by a federal agency, to the extent of the withdrawal value of the account.

(f) Loans secured by the pledge of policies of life insurance, the assignment of which is properly acknowledged by the insurer, to the extent of the cash value of the policies.

(g) Loans secured by the pledge of real estate loans of a type in which the association is authorized to invest, subject to all restrictions and requirements that would be applicable if the association were to invest directly in the loans.

(h) Loans on individual cooperative housing units on the security of a first security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property covered by the organization. The loans shall be made in accordance with the regulations governing loans secured by single family dwellings, but they shall not exceed 90% of the value of the property securing the loan.

(i) Loans for other than primarily personal, family, or household purposes.

(2) After any loan is made or purchased by an association pursuant to this section, the total of all loans made by the association pursuant to this section shall not exceed 40% of the association's total assets as determined at the end of the preceding calendar month.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987

491.706 Participation in making or acquiring loan; sale of loan or of participation in loan.

Sec. 706. An association may participate with others as a participant, comortgagee, or covendor in making or acquiring a loan if the loan conforms with this act. An association may sell a loan or participation in a loan without regard to whether the loan conforms to the requirements and limitations of this act, but this section shall not permit an association to make or purchase a loan that does not conform with this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.708 Appraisal of real estate securing loan; copy; fee; nonliability for contents or accuracy; reappraisal of real estate securing delinquent loan; appraisal of real estate at time of acquisition.

Sec. 708. A real estate loan authorized by section 702 shall not be made until a qualified person selected by the lending association has submitted a signed appraisal of the real estate securing the loan. A person making a loan application shall be furnished a copy of the appraisal if the person has paid a fee for the appraisal, but an association shall not be liable to the owner of the real estate or a prospective borrower for the contents or accuracy of the appraisal or the fact that it has been furnished to the person making a loan application. The supervisor may require a reappraisal of real estate securing a delinquent loan. Each parcel of real estate acquired by an association shall be appraised at the time of its acquisition. Each written report of appraisal required by this section shall be kept with the records of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.710 Investment in purchase and development of real estate for sale or construction of residential or commercial units.

Sec. 710. An association may invest not more than 10% of its total assets in the purchase and development of real estate for sale or for the improvement of real estate by the construction of residential or commercial units for sale or rental purposes.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.711 Association as owner or lessor of personal property; proceeds of lease transaction as rent; taxation; limitation on acquisition of personal property.

Sec. 711. (1) An association may become the owner or lessor of personal property which is acquired by the association on the specific request and for the use of a customer of the association. An association may incur any obligations it considers necessary to become the owner or lessor of such personal property.

(2) The proceeds of a lease transaction made pursuant to subsection (1) shall constitute rent, not interest.

(3) Unless otherwise provided by law, this section shall not exempt from general property taxation any personal property of an association which is leased to and used by a private individual, association, or corporation in connection with a business conducted for profit. Such personal property shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. Taxes shall be assessed to lessees or users of the property and collected in the same manner as taxes assessed to owners of personal property, except that the taxes shall not become a lien against the personal property. When due, the taxes shall constitute a debt due from the lessee or user to the local unit of government for which the taxes were assessed.

(4) Notwithstanding the restrictions under subsection (1), an association may acquire and hold personal property, including equipment, for the purpose of leasing the property or obtaining an assignment of a lessor's interest in a lease of the property. An association shall not acquire personal property under this subsection, if the acquisition shall result in an inventory of personal property not leased in excess of 20% of the association's net worth.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.712 Investment in land, buildings, and real estate for transaction of business.

Sec. 712. An association may invest an amount up to the greater of its net worth, or 5% of its total assets, in the land, buildings, and real estate as is or may be reasonably anticipated to be necessary or convenient for the transaction of its business, from a portion of which revenue may be derived by rentals or otherwise.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.714 Investment in service corporation.

Sec. 714. An investment by an association in a service corporation shall not exceed 5% of the association's total assets unless the investment has been approved by the supervisor and all investments shall be subject to limitations and approvals established by rules promulgated by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

Administrative rules: R 491.101 et seq. of the Michigan Administrative Code.

491.716 Limitations on loans to one borrower.

Sec. 716. Excluding the guaranteed portion of loans made pursuant to sections 702 and 704 and lease transactions made pursuant to section 711(1), an association shall not make a loan or commit to make a loan to any 1 borrower, if at the time the loan or commitment is made the sum of the amount of the loan or commitment and the total balance of all outstanding loans owed to the association and its affiliated service corporations by the borrower exceeds 50% of the net worth of the association, 1% of the total assets of the association, or \$250,000.00, whichever is greater. As used in this section, "borrower" means any of the following:

(a) Any person or business entity that is, or upon the making of a loan will become, the obligor on a loan.

(b) Any nominee of the obligor on a loan.

(c) All persons, trusts, partnerships, syndicates, corporations, and other organizations of which the obligor on a loan is a nominee, beneficiary, general partner, member, or beneficial owner of 10% or more of the capital stock.

(d) If the obligor is a business entity, all trusts, partnerships, syndicates, corporations, and other organizations of which any beneficiary, general partner, member, or beneficial owner of 10% or more of the capital stock of the obligor is also a beneficiary, general partner, member, or beneficial owner of 10% or more of the capital stock.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.718 Interest on loans.

Sec. 718. (1) On all loans other than loans under subsection (2), (3), or (4), or section 702, an association or federal association may charge simple interest computed on the basis of the unpaid balance in an amount not to exceed 14.55% per year.

(2) For an installment loan for the purchase of a motor vehicle, an association or federal association may charge simple interest computed on the basis of the unpaid balance in an amount not to exceed 16.5% per year, except that on installment contracts for a loan made after December 31, 1985, for the purchase of a motor vehicle, an association or federal association may charge simple interest computed on the basis of the unpaid balance in an amount not to exceed 14.55% per year. Notwithstanding any other provision of this act, on a loan made pursuant to this subsection an association or federal association may require a borrower to pay

reasonable and necessary charges which are the actual expenses incurred by the association or federal association in connection with making, closing, disbursing, extending, readjusting, or renewing the loan. Charges pursuant to this subsection shall be in addition to the interest authorized by law and are not part of the interest collected or agreed to be paid on the loan.

(3) On credit card arrangements or other agreements existing before the loan which are authorized by section 704(1)(c), an association or a service corporation may charge a discount of not more than 5% of the gross amount of obligations purchased by the association and may collect simple interest on the unpaid balance in an amount not to exceed 1.5% per month.

(4) On a loan secured by a lien, which is not a first lien against single family residential real property, and on a loan of less than \$100,000.00 secured by a lien which is not a first lien against real property other than a single family residence, an association may collect simple interest in an amount not to exceed 15% per year on the unpaid balance of the loan. This subsection shall not impair the validity of a transaction or rate of interest lawful without regard to this subsection.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 54, Imd. Eff. June 1, 1981;—Am. 1981, Act 163, Imd. Eff. Dec. 2, 1981;—Am. 1982, Act 321, Imd. Eff. Dec. 3, 1982;—Am. 1984, Act 359, Imd. Eff. Dec. 27, 1984.

491.720 Application of payments on real estate loans.

Sec. 720. Unless otherwise agreed upon by the association and a borrower, payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder to the reduction of principal. If the real estate loan is in default in any manner, payments may be applied as determined by the lending association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.722 Notes as evidence of loans.

Sec. 722. Each loan made or acquired by an association shall be evidenced by a note for the amount of the loan. The note shall specify the amount, rate of interest, terms of repayment, and may contain all other terms of the loan contract.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.724 Real estate loans; taxes, assessments, insurance premiums, and similar charges; payments; assignment of life insurance as additional collateral.

Sec. 724. An association or federal association may pay taxes, assessments, insurance premiums, and other similar charges for the protection of its real estate loans. The amounts of all the payments may be added to the unpaid balance of the loan and shall be equally secured by the lien on or security interest in the property as provided in this act. An association or a federal association may require life insurance to be assigned as additional collateral upon a loan. In that event, the association or federal association shall obtain a lien upon the policy and may advance premiums on the policy, which premium advances shall be added to the unpaid balance of the loan and shall be equally secured by the lien on the property.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.726 Real estate loans; taxes, assessments, insurance premiums, and other charges; monthly payment in advance or in arrears; disposition of funds; record.

Sec. 726. In addition to interest or interest and principal payments, an association or federal association may require the borrower to pay monthly in advance or in arrears, the equivalent of 1/12 of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing a loan, or another amount permitted under the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724, so as to enable the association to pay the charges as they become due from the funds received. The association may hold the funds for future payment or may credit the funds to the indebtedness and pay the taxes, insurance, or other charges. Each association shall keep a record of the status of taxes, assessments, insurance, and other charges on all real estate securing the association's loans and on all real and other property owned by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.728 Loan to minor veteran and spouse; prohibited action.

Sec. 728. A veteran who is a minor, together with his or her minor spouse, may contract liability in this state for repayment to an association of a loan made pursuant to the veteran's housing amendments act of 1976, Public Law 94-324, 90 Stat. 720, or a similar federal or state law, and a veteran or spouse of a veteran shall not void a contract to repay the loan to an association or shall the veteran or spouse interpose in defense

of an action arising out of the loan the fact that either or both of them were minors at the time the loan was made.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.730 Loan charges and fees; loan settlement statement.

Sec. 730. (1) An association, or a federal association, except as federal law or regulation provides otherwise, may require a borrower to pay reasonable and necessary charges which are actual expenses incurred by the association or federal association in connection with the making, closing, disbursing, modifying, renewing, or refinancing of a real estate loan, plus a loan processing fee. Actual expenses include those incurred for recording, title examination and abstracting, mortgagee's title insurance, mortgage insurance, appraisal, survey, credit report, construction draws, and preparation of papers. In addition, an association or federal association may require a borrower to pay a fee to fund the specific reserve permitted with respect to a real estate loan made pursuant to section 702(2)(a)(ii), if a fee structure for this purpose has been approved by the supervisor. An association or federal association may also require a borrower to pay reasonable and necessary charges which are the actual expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting, or renewing of a loan authorized by section 704 and may require a borrower to pay a loan processing fee. Charges pursuant to this subsection shall be in addition to the interest authorized by law and are not part of the interest collected or agreed to be paid on a loan within the meaning of a law that limits the rate of interest which may be exacted in such a transaction.

(2) Loan costs paid by a borrower under this section shall be in addition to interest authorized by law, shall not be considered to be a part of the interest collected or agreed to be paid on the loan within the meaning of a law of this state which limits the rate of interest which may be exacted in a transaction, and shall not be considered to violate a law of this state.

(3) An association shall furnish a detailed loan settlement statement to each borrower upon the closing of the loan, indicating the loan costs paid or to be paid by the borrower under this section. A copy of the statement shall be retained in the records of the association for not less than 25 months after the closing of the loan. A settlement statement furnished to a borrower that is designed to comply with the real estate settlement procedures act of 1974, 12 U.S.C. 1730f, 1831b, and 2607 to 2617, shall be considered to satisfy the requirements of this section.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.732 Acquisition of real estate in satisfaction of obligation.

Sec. 732. An association may acquire real estate in satisfaction of an obligation to the association and may purchase at a sale, public or private, any real estate upon which the association has a mortgage, judgment, lien, or other encumbrance, and may sell, exchange, lease, or mortgage real estate so acquired or purchased to a person, notwithstanding any other provision of this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.736 Liability for defect in real property.

Sec. 736. An association or federal association which makes a loan the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real property shall not be liable for any defect in the real property so purchased, designed, manufactured, constructed, repaired, modified, or improved or for any loss or damage resulting from the failure of the borrower or any agent or other person employed by the borrower to use due care in the examination, design, manufacture, construction, repair, modification, or improvement of the real property, except that this section shall not apply where the association or federal association is acting other than solely as a lender, where the association or federal association has been a party to misrepresentation with respect to the property, or where the officers or directors of the association or federal association have acted in collusion or complicity with another party responsible for the defect, loss, or damage. If the association, or an agent of the association is involved in the decision making process with regard to purchase, design, manufacture, construction, repair, modification, or improvement of real property it shall become as liable as the first party involved in the process.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 8

491.800 Plan of merger, sale, or purchase; contents; adoption; notice of meeting; vote; adoption of plan; signatures; corporate seals; acknowledgment; filing plan with affidavit;

commitment for or evidence of insurance; consent or approval; certificate of merger, sale, or purchase; affidavit of filing; certified copy of consent or approval.

Sec. 800. (1) With the approval of the commissioner, an association or bank may merge with or into, or sell its assets and transfer its liabilities to, or purchase the assets and assume the liabilities of 1 or more federal or domestic associations or federal or domestic savings bank or banks. A plan of merger, sale, or purchase as it relates to an association shall be adopted in the manner provided by this act, and approval of the commissioner shall be based on an examination of the constituent associations or banks and of the plan. A plan of merger, sale, or purchase as it relates to a bank shall be adopted in the manner provided in the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105. A merger, sale, or purchase shall not be made to defeat or defraud a creditor of a constituent association or bank.

(2) The board of each association proposing to participate in a merger, sale, or purchase shall authorize a plan setting forth all of the following:

(a) The name of each constituent association or bank and the name of the resulting association or bank.

(b) As to each constituent association or bank that is a stock association or bank, the designation and number of outstanding shares of each class, specifying the classes entitled to vote and each class entitled to vote as a class. If the number of the shares is subject to change before the effective date of the merger, sale, or purchase, the manner in which the change may occur shall be specified.

(c) The terms and conditions of the proposed merger, sale, or purchase including the manner and basis of converting the shares of each constituent stock association or bank into shares, bonds, or other securities of a resulting stock association or bank, or into cash or other consideration, which may include shares, bonds, rights, or other property or securities of a constituent association or bank that is a party to the merger, sale, or purchase or into any combination of a merger, sale, or purchase.

(d) A statement of any amendment to the articles of incorporation of the resulting association or bank to be effected by the merger, sale, or purchase.

(e) The names of all directors and executive officers of the resulting association or bank.

(f) Other provisions with respect to the proposed merger, sale, or purchase as the board considers necessary or desirable.

(3) A plan of merger, sale, or purchase authorized by the board of each constituent association shall be submitted for adoption at a meeting of the association's members. Notice of the meeting shall be given to each member not less than 20 days before the meeting, in the manner provided in this act for giving notice of meetings to members. The notice shall include or be accompanied by a copy or summary of the plan.

(4) At the meeting, a vote of the members shall be taken on the proposed plan. In the case of a stock association, the plan shall be adopted upon receiving the affirmative vote of members holding more than 50% of the issued and outstanding voting stock of the association. In the case of a mutual association the plan shall be adopted upon receiving the affirmative vote of more than 50% of the votes cast by members at the meeting.

(5) After adoption, a plan shall be signed by the president or vice-president, and by the secretary or treasurer of each constituent association, under the corporate seals of each constituent association and with the acknowledgment that the plan is the respective act, deed, and agreement of the association. The plan shall be filed with the supervisor together with an affidavit by the treasurer or secretary of each constituent association that the plan has been authorized by the board of the association or bank and adopted by the members under this section. If the resulting association is to be a domestic association or domestic savings bank, there shall also be filed with the supervisor, as a condition to his or her approval of the merger, sale, or purchase, a firm commitment for or evidence of insurance of the resulting association's deposits and other accounts of a withdrawable type by the federal savings and loan insurance corporation. A federal association that is a constituent association to a merger, sale, or purchase shall furnish a certified copy of the consent or approval of the federal home loan bank board to the merger, sale, or purchase if the consent or approval is required by applicable law. Upon approval of the merger, sale, or purchase, the supervisor shall execute a certificate of merger, sale, or purchase, a copy of which is to be sent to the constituent associations. After approval, an officer of the resulting association shall provide the supervisor with an affidavit that evidence of the merger, sale, or purchase has been filed in the office of the register of deeds of each county where an office of the association is located. A bank that is a constituent association to a merger shall furnish a certified copy of the consent or approval of the appropriate regulatory agency, if the consent or approval is required by applicable law.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 2000, Act 365, Imd. Eff. Jan. 2, 2001.

491.802 Merger and continuation of corporate existence in resulting association; powers, rights, interests, and duties of resulting association; transfer and vesting of property; resulting association subject to removal by court; substitute fiduciary; statement; prosecution of action or proceeding.

Sec. 802. If a merger is approved by the supervisor and becomes effective under the terms of the supervisor's approval, the corporate existence of each constituent association shall be merged into and continued in the resulting association which shall be considered to be the same association as each of the constituent associations, possessing all the rights, interests, privileges, powers, and franchises, and being subject to all the restrictions, disabilities, and duties of each of the constituent associations. All the rights, interests, privileges, and franchises of each of the constituent associations and all property, real, personal, and mixed, and all debts due to any of them on whatever account, shall be transferred to and vested in the resulting association without any deed or other transfer and without any order or other action on the part of a court or otherwise; and all property, rights, privileges, powers, franchises, and interest and each and every other interest shall thereafter be as effectually the property of the resulting association as they were of each of the constituent associations. The title to any real estate, whether by deed or otherwise, under the laws of the state vested in either of the constituent associations, shall not revert or be in any way impaired by reason of this act. The resulting association by virtue of the merger, and without any order or other action on the part of a court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, personal representative, and in every other fiduciary capacity, in the same manner and to the same extent as the rights, franchises, and interests were held or enjoyed by each constituent association at the time of the merger. If a constituent association at the time of merger was acting under appointment of a court as trustee, executor, administrator, personal representative, or in any other fiduciary capacity, the resulting association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the constituent association before the merger. This act shall not be construed to impair the right of a court to remove the resulting association for reasons other than the fact of merger, and to appoint instead a substitute trustee, executor, personal representative, or other fiduciary. The resulting association shall file with each court or other public tribunal, agency, or office by which each of the constituent associations was appointed in the capacity of fiduciary or agent, and in the court file of each estate, action, or proceeding in which any of them was acting, a statement setting forth the fact of merger, the name of each association participating in the merger, the name of the resulting association, the association's place of business, and the amount of the association's net worth. An action or proceeding by or against any of the constituent associations may be prosecuted to judgment, as if the merger had not taken place, or the resulting association may be substituted in the place of a constituent association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.804 Office of acquired association as branch office.

Sec. 804. An association resulting from the merger of 2 or more associations under this act may establish and operate each office of the acquired association as a branch office.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.805 Conversion of mutual association into stock association or conversion of stock association into mutual association.

Sec. 805. (1) With the approval of the supervisor, a mutual association may convert itself into a stock association or a stock association may convert itself into a mutual association. The plan of conversion for an association shall be adopted in the manner provided by this act, and approval of the supervisor shall be based on an examination of the association and of the plan of conversion. A conversion shall not be made to defeat or defraud a creditor of a converting association.

(2) The board of an association proposing to convert shall authorize a plan of conversion setting forth all of the following:

(a) The name of the association and the name of the resulting association.

(b) The terms and conditions of the proposed conversion.

(c) A statement of any amendment to the articles of incorporation of the resulting association to be effected by the conversion.

(d) The names of all directors and executive officers of the resulting association.

(e) Other provisions with respect to the proposed conversion as the board considers necessary or desirable.

(3) A plan of conversion authorized by the board of an association shall be submitted for adoption at a meeting of the association's members. Notice of the meeting shall be given to each member not less than 20

days before the meeting, in the manner provided in this act for giving notice of meetings to members. The notice shall include or be accompanied by a copy or summary of the plan of conversion.

(4) At the meeting, a vote of the members shall be taken on the proposed plan of conversion. In the case of a stock association, the plan of conversion shall be adopted upon receiving the affirmative vote of members holding more than 50% of the issued and outstanding voting stock of the association. In the case of a mutual association the plan of conversion shall be adopted upon receiving the affirmative vote of more than 50% of the votes cast by members at the meeting. The members of the association shall also elect directors and executive officers for the resulting association.

(5) After adoption, a plan of conversion shall be signed by the president or vice-president, and by the secretary or treasurer, under the corporate seal of the association and with the acknowledgment that the plan of conversion is the respective act, deed, and agreement of the association. The plan of conversion, articles of incorporation, and bylaws shall be filed with the supervisor. If the resulting association is to be a domestic association or domestic savings bank, there shall also be filed with the supervisor, as a condition to his or her approval of the conversion, a firm commitment for or evidence of insurance of the resulting association's deposits and other accounts of a withdrawable type by the federal savings and loan insurance corporation. A federal association shall furnish a certified copy of the consent or approval of the federal home loan bank board to the conversion, if the consent or approval is required by applicable law. A savings bank shall furnish a certified copy of the consent or approval of the appropriate regulatory agency, if the consent or approval is required by applicable law. Upon approval of the conversion, the supervisor shall certify that fact on the plan of conversion, articles of incorporation, and bylaws filed with the supervisor. After approval by the supervisor, a certified copy of the certificate of conversion shall be recorded in the office of the register of deeds of each county where an office of the association is located. Upon approval of conversion, the supervisor shall also issue a certificate of charter and a certificate of authority to commence operations, indicating on the certificates the effective date of the conversion.

(6) If a conversion is approved by the supervisor and becomes effective under the terms of the supervisor's approval, the corporate existence of an association shall be merged into and continued in the resulting association which shall be considered to be the same association as the converted association, possessing all the rights, interests, privileges, powers, and franchises, and being subject to all the restrictions, disabilities, and duties of the converted association. All the rights, interests, privileges, and franchises of the converted association and all property, real, personal, and mixed, and all debts due on whatever account, shall be transferred to and vested in the resulting association without any deed or other transfer and without any order or other action on the part of a court or otherwise; and all property, rights, privileges, powers, franchises, and interest and each and every other interest shall thereafter be as effectually the property of the resulting association as they were of the converted association. The title to any real estate, whether by deed or otherwise, under the laws of the state vested in the converted association, shall not revert or be in any way impaired by reason of this act. The resulting association by virtue of the conversion, and without any order or other action on the part of a court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, personal representative, and in every other fiduciary capacity, in the same manner and to the same extent as the rights, franchises, and interests were held or enjoyed by the converted association at the time of the conversion. If the converted association at the time of conversion was acting under appointment of a court as trustee, executor, administrator, personal representative, or in any other fiduciary capacity, the resulting association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the converted association before the conversion. This act shall not be construed to impair the right of a court to remove the resulting association for reasons other than the fact of conversion, and to appoint instead a substitute trustee, executor, personal representative, or other fiduciary. The resulting association shall file with each court or other public tribunal, agency, or office by which the converted association was appointed in the capacity of fiduciary or agent, and in the court file of each estate, action, or proceeding in which any of them was acting, a statement setting forth the fact of conversion, the name of the association participating in the conversion, the name of the resulting association, the association's place of business, and the amount of the association's net worth. An action or proceeding by or against the converted associations may be prosecuted to judgment as if the conversion had not taken place, or the resulting association may be substituted in the place of a converted association.

History: Add. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.806 Conversion of mutual or stock association into federal mutual or stock association; approval; filing of documents, minutes, and charter; plan of conversion; notice of meeting; approval and effect of conversion; recordation of certificate.

Sec. 806. (1) A mutual or stock association may convert itself into a federal mutual or stock association. All conversions under this section shall be subject to approval by members of the association and by the supervisor, and by all federal supervisory authorities having jurisdiction over the resulting association. An association desiring approval of the supervisor shall file copies of all documents that evidence preliminary approval of the conversion by federal supervisory authorities having jurisdiction over the conversion and a verified copy of the minutes of the meeting of the board of the association called for the purpose of acting upon the proposed conversion. The converting association shall also file with the supervisor a copy of the charter issued to the resulting federal association, certified by the federal home loan bank board.

(2) The plan of conversion shall be submitted for consideration by the members at a meeting called for that purpose. The notice given to members of a meeting at which a conversion is to be considered shall state the purposes of the meeting, shall include a full and accurate description of the plan of conversion and all other matters to be brought before the meeting, shall state that any proxy for the meeting solicited by or given to the association's designees is revocable by the member, and shall state the time, date, and place of the meeting. A notice of a meeting of members to consider and act upon a proposed conversion shall be given as required in this act not less than 20 days before the date of the meeting to each voting member of the converting association and to the supervisor and any federal supervisory authority having jurisdiction over the existing or proposed association. Approval by the members of a stock association shall require the affirmative vote of members holding more than 50% of the issued and outstanding voting stock of the stock association. Approval by the members of a mutual association shall require the affirmative vote of more than 50% of the votes cast by members.

(3) Upon approval of the conversion by the supervisor following the granting of a charter for a resulting federal association by the federal home loan bank board, the converting association, except insofar as this act shall be otherwise applicable to federal associations, shall cease to be subject to this act and authority of the supervisor under this act. After approval by the supervisor of the conversion, the resulting association shall have a certificate attesting to the fact of conversion and its organization recorded in the office of the register of deeds for the county in which the association's principal office is located.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.807 Conversion of stock association into bank.

Sec. 807. (1) A stock association may convert itself into a bank. All conversions under this section shall be subject to approval by the members of the association and by the supervisor, and by all federal supervisory authorities having jurisdiction over the resulting bank. An association seeking approval of the supervisor shall file copies of all documents that evidence preliminary approval of the conversion by federal supervisory authorities having jurisdiction over the conversion, and a verified copy of the minutes of the meeting of the board of the association called for the purpose of acting upon the proposed conversion. The converting association shall also file with the supervisor a copy of the charter issued to the resulting national bank, and certified by the comptroller of the currency, if applicable.

(2) The plan of conversion shall be submitted for consideration by the members of the association at a meeting called for that purpose. The notice given to members of a meeting at which a conversion is to be considered shall state the purposes of the meeting, shall include a full and accurate description of the plan of conversion and all other matters to be brought before the meeting; shall state that any proxy for the meeting solicited by or given to the association's designees is revocable by the member; and shall state the time, date, and place of the meeting. A notice of a meeting of the members to consider and act upon a proposed conversion shall be given as required in this act not less than 20 days before the date of the meeting to each voting member of the converting association and to the supervisor and any federal supervisory authority having jurisdiction over the existing or proposed association or bank. Approval by the members of a stock association shall require the affirmative vote of members holding more than 50% of the issued and outstanding voting stock of the stock association.

(3) Upon approval of the conversion by the supervisor following the granting of a charter for a resulting bank by the appropriate regulatory agency, the converting association shall cease to be subject to this act and to the authority of the supervisor under this act. After approval by the supervisor of the conversion, the resulting bank shall have a certificate attesting to the fact of conversion and its organization recorded in the office of the register of deeds for the county in which the bank's principal office is located.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.808 Conversion of federal mutual or stock association to mutual or stock association.

Sec. 808. (1) A federal mutual or stock association may convert to a mutual or stock association. All conversions under this section shall be subject to approval by federal regulatory authorities having jurisdiction

over the federal association and by the supervisor. A converting federal association shall file with the supervisor a copy of all documents evidencing compliance with federal laws and regulations governing the conversion, including certified copies of all approvals, preliminary approvals, and documents reflecting corporate action relating to the conversion. After approval by the supervisor of the conversion, the resulting association shall have a certificate attesting to the fact of conversion and its organization recorded in the office of the register of deeds for the county in which the association's principal office is located.

(2) Upon approval of a conversion under this section, the directors of the resulting association shall execute and file with the supervisor articles of incorporation and shall adopt bylaws and proceed to comply with all conditions specified in the supervisor's approval, which shall include the filing of a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type by the federal savings and loan insurance corporation. Upon filing of the articles of incorporation and bylaws and compliance with the conditions, the supervisor shall return 1 certified copy of the articles of incorporation to the association and shall issue a certificate of charter and a certificate of authority to commence operations, indicating on the certificates the effective date of the conversion.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.809 Conversion of bank to stock association.

Sec. 809. (1) A bank may convert to a stock association. All conversions under this section shall be subject to approval by federal regulatory authorities having jurisdiction over the bank and by the supervisor. A converting bank shall file with the supervisor a copy of all documents evidencing compliance with federal laws and regulations governing the conversion, including certified copies of all approvals, preliminary approvals, and documents reflecting corporate action relating to the conversion. After approval by the supervisor of the conversion, the resulting association shall have a certificate attesting to the fact of conversion and its organization recorded in the office of the register of deeds for the county in which the association's principal office is located.

(2) Upon approval of a conversion under this section, the directors of the resulting association shall execute and file with the supervisor articles of incorporation and shall adopt bylaws and proceed to comply with all conditions specified in the supervisor's approval, which shall include the filing of a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type by the federal savings and loan insurance corporation. Upon filing of the articles of incorporation and bylaws and compliance with the conditions, the supervisor shall return 1 certified copy of the articles of incorporation to the association and shall issue a certificate of charter and a certificate of authority to commence operations, indicating on the certificates the effective date of the conversion.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.810 Plan of conversion, merger, sale, or purchase; substantive or procedural requirements; approval; application procedures; fees; rules or orders; conditions.

Sec. 810. In passing upon a written plan of conversion, merger, sale of assets and liabilities, or purchase of assets and liabilities subject to this act, the supervisor shall prescribe the substantive or procedural requirements as the supervisor considers necessary or proper to ensure that the plan of conversion, merger, sale, or purchase is fair and equitable to the association and to the association's members. A plan of conversion, merger, sale, or purchase under this section shall be submitted to the supervisor for approval before giving notice to members of a meeting to be called for the purpose of considering the plan of conversion, merger, sale, or purchase. The approval by the supervisor of a conversion, merger, sale, or purchase permitted under this act shall be subject to the application procedures as the supervisor prescribes, and to the payment of the fees as the supervisor establishes. In promulgating rules or issuing orders or approvals to carry out the requirements of sections 800, 805, 806, 807, or this section, the supervisor shall require that all of the following conditions are met:

(a) Accurate and adequate disclosure of the terms and effects of plans of conversion is provided to purchasers or recipients of stock in resulting stock associations or banks, including members of a converting or merging mutual association.

(b) Adjustments are made in plans of conversion, merger, sale, or purchase to be effected by approval of an association's or bank's board, which are necessary or appropriate to accomplish the purposes of this section.

(c) Plans of conversion, merger, sale, or purchase and proxy statements, offering circulars, and related instruments and actions implementing the plans are subject to review and approval by the supervisor.

(d) The stock to be issued or canceled as a part of a conversion, merger, sale, or purchase is fairly and independently valued and priced, and the stock which is to be issued is allocated and distributed fairly and without manipulative or deceptive devices being employed.

(e) Appropriate provision is made regarding fractional share interests and minimum stock purchase requirements.

(f) Plans of conversion, merger, sale, or purchase are adopted and implemented in a form and manner so that stability and continuity of management are encouraged and so that the stability, safety, and soundness of the associations are not impaired.

(g) All conversions of mutual associations to stock associations, federal stock associations or banks shall use as a record date for determining the interests of account holders a date set by the supervisor and published annually during the month of January, which date shall be not more than 18 months before its publication.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987

491.811 Organization of new association; consolidation of new association and existing association; rights of dissenting shareholder; determining fair market value of surrendered shares; duties of resulting association; definitions.

Sec. 811. (1) An association intending to have its principal office in the same city or village as the principal office of an existing association may be organized pursuant to section 300. The organization of the new association is exempt from sections 302, 304, and 306, if the association is organized for the sole purpose of effecting a consolidation with an existing association pursuant to section 800 and if, upon completion of the consolidation, a savings and loan holding company becomes the owner of all of the outstanding voting shares of the resulting association. The new association and the existing association may consolidate under the charter of either association and sections 800, 802, and 804 shall apply, except that the agreement of consolidation may provide that shares of either or both the consolidating associations, instead of being converted into shares of the resulting association, be converted into shares or other securities of the savings and loan holding company.

(2) Upon completion of the consolidation, a dissenting shareholder shall be entitled to receive in cash from the resulting association the fair market value of all the shares of the existing association held by the shareholder. To receive fair market value reimbursement, a dissenting shareholder must make a written request to the resulting association within 30 days after the date of the completion of the consolidation, which request shall be accompanied by the surrender of the shareholder's stock certificates. Upon the filing of the written request and the surrender of stock certificates, the shareholder shall cease to have any of the rights of a shareholder, except the right to be paid the fair market value of the surrendered shares. A request for fair market value reimbursement may not be withdrawn except with the written consent of the resulting association.

(3) The fair market value of shares surrendered pursuant to subsection (2) shall be determined, as of the date on which the meeting of shareholders of the existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the supervisor upon written application filed by a dissenting shareholder entitled to receive the fair market value of his or her shares or by the consolidated association. The appraiser so selected shall file a written report of his or her appraisal with the supervisor, who in turn shall forward copies of the appraisal to all interested parties. The valuation as determined by the appraiser shall be final and binding on all parties as to the fair market value of the shares.

(4) The resulting association shall pay to each dissenting shareholder the fair market value of the shareholder's shares within 30 days following the receipt of the written report of the appraiser from the supervisor. Subject to the review and approval of the supervisor, the fees and expenses of the appraisal shall be paid by the resulting association. The agreement of consolidation shall provide the manner of disposing of the shares of the existing association that are surrendered by the dissenting shareholders.

(5) As used in this section:

(a) "Consolidation" means "merger" as that term is used in sections 800, 802, and 804.

(b) "Dissenting shareholder" means a shareholder of an existing association consolidated under this section that either votes against the consolidation or gives notice in writing to the existing association at or prior to the meeting called for the purpose of considering the agreement of consolidation that the shareholder dissents from the consolidation.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.812 Resulting association as continuation of entity of converted association; vesting of property in resulting association; rights, obligations, and relations; pending actions and proceedings; judgment, order, or decree.

Sec. 812. Upon the effective date of a conversion permitted by this act, the legal existence of an association shall not terminate, but the resulting association is considered a continuation of the entity of the

converted association and all property of the converted association, including rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of whatever value or benefit then existing, or pertaining to the converted association, or which would inure to the converted association, immediately by act of law and without a conveyance or transfer and without any further act or deed remains and vests in the resulting association, and the resulting association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converted association. The resulting association, as of the effective date of the conversion, shall continue to have and succeed to all the rights, obligations, and relations of the converted association. All pending actions and proceedings to which the converted association is a party shall not be abated or discontinued by reason of the conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the resulting association may continue the action or proceeding in its corporate name. A judgment, order, or decree may be rendered for or against the resulting association which may have been rendered for or against the converted association previously involved in the action or proceeding.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.814 Voting on liquidation and dissolution; notice of meeting; certified copy of minutes; itemized statement of assets and liabilities; itemized list of members.

Sec. 814. At a meeting called for the purpose of voting on liquidation and dissolution, an association may resolve to liquidate and dissolve upon the affirmative vote of members having more than 50% of the aggregate voting power of the association. Notice clearly stating the purpose of the meeting shall be given as required in this act not less than 30 days before the meeting of the members, and a verified copy of the notice shall be sent by certified mail to the supervisor. Before the action of the members is effective, a certified copy of the minutes of the meeting shall be filed with the supervisor, accompanied by an itemized statement of the association's assets and liabilities, and an itemized list including the name of each member, last known address, and the value of voting units in force, designating those members voting for dissolution.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.816 Liquidation and dissolution; deposits to accounts and new loans prohibited; retention of income and receipts; retention of existence; certified copies of proceedings; examination of association.

Sec. 816. After filing a copy of the minutes of the meeting held for the purpose of voting on liquidation and dissolution, the association shall not accept deposits to accounts, nor shall the association make any new loans. All of the association's income and receipts in excess of actual expenses of management shall be retained pending an examination by the supervisor. The association's existence shall be retained for the sole purpose of paying, satisfying, and discharging existing liabilities and obligations, collecting and distributing assets, and doing all other acts required to adjust and dissolve the association's business and affairs. After certified copies of the proceedings are filed with the supervisor, the supervisor shall make an examination of the association under section 826.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.818 Dissolution; sale and transfer of assets or properties; application of income and receipts to discharge of liabilities.

Sec. 818. In order to facilitate dissolution following affirmative action by the members of the association, upon receipt of written approval from the supervisor, the association may sell and transfer any of the association's assets or properties to another association or other person, subject to any vested and accrued rights of mortgagors or other borrowers, and may begin applying the association's income and receipts in excess of the expenses of dissolution to the discharge of the association's liabilities.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.820 Liquidating agent or committee; designation; approval; bond; publication of notice to creditors; conducting liquidation.

Sec. 820. At the meeting held to consider dissolution, the members shall designate 1 or more persons to act as a liquidating agent or committee, who shall be subject to approval by the supervisor and shall furnish a suitable bond. Once a week for 8 successive weeks the liquidating agent or committee shall publish a notice in a newspaper within the county of the association's principal office informing creditors to present their claims against the association for payment. The publication of notice shall not apply to an association in voluntary liquidation which disposes of sufficient of its assets to another association, federal association, or other person

to pay the association's creditors in full, or if all of the liabilities are assumed by the other association, federal association, or person. The liquidating agent or committee shall conduct the liquidation pursuant to law and the rules promulgated by the supervisor and under the supervision of the board of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.822 Reports; certified copies of dissolution proceedings.

Sec. 822. An association operating under sections 814 to 826 shall make the same reports to the supervisor as are required of all other associations under this act. The liquidating agent or committee shall file reports with the supervisor not later than July 31 and January 31 each year, and at other times as the supervisor may require, showing the progress of the liquidation until the liquidation is completed. The reports shall be in a form and contain the information as the supervisor requires. The liquidating agent or committee shall also make an annual report to the members on the date provided for in the bylaws of the association for the annual meeting of the association. Certified copies of all dissolution proceedings reflecting action by the directors or members of an association shall be filed with the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.824 Liquidating agent or committee; removal; appointment of new agent or members.

Sec. 824. At a meeting called at any time in the same manner as if the association continued as an active association, the members by vote representing a majority of the outstanding voting units of the association, subject to approval by the supervisor, may remove the liquidating agent or committee and appoint a new agent or new members of the committee.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.826 Examination of liquidating association; purpose; expenses; appointment of conservator.

Sec. 826. (1) The supervisor may examine into the affairs of a liquidating association at any time for the purpose of determining that the rights and interests of the creditors and members are being properly served. The expenses of the examination shall be paid by the association to the state, but shall not exceed \$100.00 per day for each examiner, plus actual expenses incurred while making the examination.

(2) If from the reports from the examiners or valid complaints from members or creditors it appears to the supervisor that the liquidation is not proceeding in a lawful, safe, or equitable manner, the supervisor shall appoint a conservator as provided in this act, but without the power to perform an act inconsistent with the liquidation of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.828, 491.830 Repealed. 1981, Act 114, Eff. July 17, 1981.

Compiler's note: The repealed sections pertained to amendment to articles of incorporation and to voting as class on proposed amendment by members of stock association.

ARTICLE 9

491.900 Number and classes of shares issued by stock association; par value; voting, dividend, liquidation, and other right, preference, and limitation; denial or limitation of rights; distinguishing shares of each class; equality of shares.

Sec. 900. A stock association may issue the number of shares authorized in the association's articles of incorporation. The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares with par value and shall have a designation and a relative voting, dividend, liquidation, and other right, preference, and limitation, consistent with this act, as are stated in the articles of incorporation. The articles of incorporation may deny, limit, or otherwise prescribe the voting rights and may limit or otherwise prescribe the dividend or liquidation rights of shares of a class. If the shares are divided into 2 or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes. Each share shall be equal to every other share of the same class.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.902 Convertible shares or securities; issuance; approval; increasing shares to satisfy conversion privileges; reservation of unissued shares; consideration; cancellation of converted shares; reduction of shares.

Sec. 902. (1) If the articles of incorporation provide, and subject to restrictions in this act, a stock association may issue shares convertible at the option of the holder or the association or upon the happening

of a specified event into shares of the same or any other class. Authorized shares, issued or unissued, may be made convertible within a period and upon the terms and conditions which are specified by the articles of incorporation.

(2) Members' approval for the issuance of convertible shares or convertible securities authorized by section 516 may provide that the board may amend the articles of incorporation to increase the authorized shares of any class to a number sufficient to satisfy the conversion privileges of the shares or other securities after giving effect to their issuance and any previously authorized but unissued shares of the class.

(3) Convertible shares of a stock association shall not be issued unless a sufficient number of authorized but unissued shares of the appropriate class are reserved by the board to be issued only in satisfaction of the conversion privileges of the convertible shares when issued, or the aggregate conversion privileges of the convertible shares when issued do not exceed the aggregate of any shares reserved by the board of the association and any additional shares which may be authorized by the board under this section.

(4) The consideration for shares issued upon the exercise of a conversion privilege shall be that provided in section 914. Shares which have been converted shall be canceled and the number of authorized shares of the stock association shall be reduced accordingly.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.904 Subscription for shares; enforceability; subscription irrevocable; exception; contract to purchase shares as subscription agreement.

Sec. 904. (1) A subscription for shares in a stock association made before or after organization of the association is not enforceable unless in writing and signed by the subscriber.

(2) A subscription for shares of a stock association to be organized is irrevocable and may be accepted by the association for a period of 6 months, unless otherwise provided by the subscription agreement or unless all the subscribers consent to the revocation.

(3) A contract with an association to purchase its shares to be issued is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the contract.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.906 Subscription for shares; payment; call for payment ratable; retention of shares as security.

Sec. 906. Unless otherwise provided in a subscription agreement, a subscription for shares made before organization of a stock association shall be paid in full at the time determined by the supervisor, and a subscription made after organization shall be paid in full at the time determined by the board of the association. A call made by the association for payment on subscriptions shall be ratable as to all shares of the same class, and an association shall retain any shares as security for performance by the subscriber of his or her obligation under a subscription agreement, subject to the power of sale or rescission upon default provided in section 908.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.908 Default in payment under subscription agreement; powers of stock association; rights and duties cumulative; limiting and adding to rights and remedies.

Sec. 908. (1) In case of default in payment of an installment, call, or other amount due under a subscription agreement, including an amount which may become due as a result of a default in performance of a provision of a subscription agreement, a stock association may do any of the following:

(a) Collect the amount due in the same manner as any other debt owing to the association. At any time before full satisfaction of the claim or a judgment, the association may proceed as provided in subdivision (b).

(b) Sell the shares in a reasonable manner. Notice of the time and place of a public sale or of the time after which a private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail not less than 20 days before a time stated in the notice. Any excess of net proceeds realized over the amount due plus interest shall be paid to the subscriber. If the sale is made in good faith, in a reasonable manner, and upon notice, the association may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value shall acquire title to the sold shares free of any right of the subscriber even though the association fails to comply with 1 or more of the requirements of this subdivision.

(c) Rescind the subscription as provided in section 906, and recover damages for breach of contract. Unless special circumstances show proximate damages of a different amount, the measure of damages shall be the difference between the market price at the time and place of tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement in any amount which is reasonable,

taking into consideration any estimated difficulties of proof of loss. The subscriber may have restitution of the amount by which the sum of the subscriber's payments exceed the damages for breach of the contract, whether fixed by agreement or judgment.

(2) The rights and duties provided in this section shall be interpreted as cumulative so far as is consistent with entitling the association to a full and single recovery of the amount due or the association's damages. The subscription agreement may limit the rights and remedies of the association provided in this section, and may add to them as provided in this subsection.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.910 Rescission of subscription; effect.

Sec. 910. Rescission by a stock association of a subscription under which a part of the shares subscribed for have been issued and in which the association retains a security interest, as provided in section 906, effects the cancellation of the shares.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.912 Consideration for issuance of shares; payment; rights and privileges; conclusive judgment of value.

Sec. 912. (1) Shares shall be issued for a consideration not less than the par value of the shares, as fixed by the board. That part of the capital in excess of par of a stock association transferred to stated capital upon issuance of shares as a share dividend shall be the consideration for issuance of the shares.

(2) Consideration for the issuance of shares may be paid in whole or in part in money or other tangible or intangible property. If payment of the full consideration for which shares are to be issued is received by the association, the subscriber has all the rights and privileges of a member, including registration of a certificate representing the shares in the subscriber's name, and the shares shall be fully paid and nonassessable. If the consideration is future payment, the rights of the subscriber shall be determined by the subscription agreement. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received for shares, options, or rights to shares is conclusive.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.914 Consideration for shares issued in exchange or conversion; determination.

Sec. 914. Upon a conversion of shares or of convertible debt instruments provided for by section 516, or upon an exchange of shares for the same or a different number of shares, whether of the same or a different class, consideration for the shares issued in exchange or conversion shall be determined by the board, and shall be 1 or more of the following:

(a) The stated capital then represented by the shares exchanged or converted, or, in case of convertible debt instruments, the principal sum of and accrued interest on the debt instruments.

(b) Any stated capital not previously allocated to a designated class of shares which is thereupon allocated to the new shares.

(c) That part of capital in excess of par, if any, transferred to stated capital upon the issuance of shares for the shares or debt instruments exchanged or converted.

(d) Any additional consideration paid to the association upon the issuance of shares for the shares or debt instruments exchanged or converted.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.916 Obligation of member; liability of member as assignee, transferee, or pledgee of subscription for shares.

Sec. 916. (1) Except as provided in this act, a member of a stock association is not under an obligation to the association or the association's creditors other than the obligation to pay to the association on the unpaid portion of the consideration for which the shares were issued or to be issued, which shall not be less than the amount of the consideration for which the shares could be lawfully issued.

(2) A member becoming an assignee, transferee, or a pledgee of a subscription for shares, in good faith and without knowledge or notice that the full consideration for the shares has not been paid, is not liable to the association or the association's creditors for any unpaid portion of the consideration, but the original subscriber and an assignee or transferee before an assignment or transfer to a person taking in good faith and without knowledge or notice remains liable for the unpaid portion of the consideration.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.918 Rights and options; creation; issuance; consideration for shares purchased under rights and options; terms and conditions; rights or options issued as incentive to service.

Sec. 918. (1) Subject to a provision in the association's articles of incorporation, a stock association may create and issue, whether or not in connection with the issue and sale of the association's shares or bonds, rights or options entitling the holders of the shares or bonds to purchase from the association, upon the consideration, terms, and conditions as may be fixed by the board, shares of any class, whether authorized but unissued shares reserved for this purpose, or shares to be purchased or acquired.

(2) The consideration for shares to be purchased under the rights or options shall comply with sections 912 and 914.

(3) The terms and conditions of the rights or options, including the times at or within which and the prices at which they may be exercised and any limitation upon transferability, shall be set forth or incorporated by reference in the instruments evidencing the rights or options.

(4) The issue of the rights or options to 1 or more directors, officers, or employees of the association or a subsidiary or affiliate of the association, as an incentive to service or continued service with the association, a subsidiary or affiliate of the association, or to a trustee on behalf of the directors, officers, or employees, shall be authorized or ratified at a meeting of members, or issued pursuant to a plan adopted or ratified by the members.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.920 Certificate representing shares; signatures of officers; seal; contents.

Sec. 920. (1) The shares of a stock association shall be represented by certificates signed by the chairperson, president, or vice-president and by the treasurer, assistant treasurer, secretary, or assistant secretary of the association, and shall be sealed with the seal of the association or a facsimile of the seal. The signatures of the officers may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the association itself or the association's employee. If an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, the certificate may be issued by the association with the same effect as if the person were the officer at the date of issue.

(2) A certificate representing shares shall state upon the certificate's face the name of the association and the address of the association's principal office; that the association is formed under the laws of this state; the name of the person to whom issued; the number and class of shares; and the par value of the share represented by the certificate.

(3) A certificate representing shares shall set forth on its face or back or shall be accompanied by a full statement of the designation, relative rights, preferences, and limitations of the shares of each class authorized to be issued.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.922 Lost or destroyed certificate; issuance of new certificate; bond.

Sec. 922. A stock association may issue a new certificate for shares in place of a certificate previously issued by the association, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or the owner's legal representative, to give the association a bond sufficient to indemnify the association against a claim that may be made against the association on account of the alleged lost or destroyed certificate or the issuance of the new certificate.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.924 Issuance of fractions of share; purpose; issuance of scrip; form; signature; exchangeability; rights; conditions; sale or purchase of additional scrip; payment in cash of fair value of fractions of share.

Sec. 924. (1) A stock association shall not issue fractions of a share to effect share transfers, share distributions, or a reclassification, merger, or reorganization. Instead of fractions of a share, an association may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the association or of the association's agent, exchangeable as provided in the scrip for full shares, but the ownership of scrip shall not entitle the holder to any rights of a member except as provided in the scrip. The scrip shall be issued subject to the condition that it is void if not exchanged for certificates representing full shares before a specified date. The scrip may be subject to the condition that the shares for which the scrip is exchangeable may be sold by the association and the proceeds of the sale distributed to the holders of the scrip, or subject to any other conditions which the board may determine. An association may provide reasonable opportunity for persons entitled to scrip to sell or purchase additional scrip needed to acquire a full

share.

(2) As an alternative, an association may pay in cash the fair value of fractions of a share as of the time when those entitled to receive the fractions are determined.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.926 Merger or acquisition; allocation of capital in excess of par to retained earnings; limitation on aggregate retained earnings.

Sec. 926. If shares are issued by a stock association in a merger or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another association or federal association, any amount that would otherwise constitute capital in excess of par may be allocated to retained earnings by the board of the issuing association. However, the aggregate retained earnings of the association shall not exceed the sum of the retained earnings of the issuing association and of all other associations or federal associations that were merged or of which the shares or assets were acquired.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.928 Transactions with respect to share of capital stock; purchase of shares on order and for account of customer; loan on security of association's own shares; association as purchaser or holder of own shares; purchase or redemption of shares of preferred stock.

Sec. 928. (1) An association shall not engage in a transaction with respect to shares of the association's capital stock unless specifically authorized by this act.

(2) A stock association may purchase its own shares upon the order of and for the account of a customer, without recourse.

(3) A stock association shall not make a loan on the security of the association's own shares, nor be the purchaser or holder of the shares unless the security or purchase is necessary to prevent loss on a debt previously contracted in good faith.

(4) A stock association may purchase or redeem shares of its preferred stock previously issued, but only in accordance with the terms and conditions governing purchase or redemption of the shares as a class.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.930 Cancellation of reacquired shares; restoration to status of authorized but unissued shares; amendment of articles of incorporation reducing number of authorized shares; reduction of stated capital.

Sec. 930. (1) Shares that have been issued and have been purchased, redeemed, or otherwise reacquired by an association shall be canceled, and restored to the status of authorized but unissued shares. If the articles of incorporation prohibit reissue of any shares required or permitted to be canceled under this section, the association shall adopt and file an amendment of the articles of incorporation reducing the number of authorized shares accordingly.

(2) If reacquired shares other than converted shares are canceled, the stated capital of the association is reduced by the amount of stated capital then represented by the canceled shares.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.932 Determination of amount or availability of retained earnings; computation; merger or combination of associations; limitation on amount of retained earnings; transfer of part of retained earnings to capital in excess of par; application of capital in excess of par to reduction or elimination of deficit in retained earnings account; disclosure; reserves.

Sec. 932. (1) If it is necessary for a stock association to determine the amount or availability of its retained earnings under this article, the amount may be computed either from the date of formation of the association or from the latest date when a deficit was eliminated as permitted in this section by an application of the association's capital in excess of par. Upon merger, or combination of 2 or more associations by purchase or otherwise, the amount of retained earnings of the resulting or purchasing association shall not exceed the aggregate retained earnings of the constituent associations reduced by distributions to members and transfers of retained earnings to capital in excess of par made in connection with the issue of shares or otherwise at the time of merger or combination. A part of the retained earnings of an association may be transferred by the board to capital in excess of par.

(2) A stock association may, by resolution of its board, apply any or all of its capital in excess of par to the reduction or elimination of a deficit in the retained earnings account. The application of capital in excess of par to the elimination of a deficit in the retained earnings account shall be disclosed in the next financial statement covering the period in which the elimination is made that is furnished by the association to the

association's members or, if practicable, in the first notice of dividend or share distribution that is furnished to holders of each class of the association's shares between the date of elimination and the next financial statement, and in any event to all the association's members within 6 months after the date of the action.

(3) This section shall not be construed to prevent a stock association from creating reserves from its retained earnings or capital in excess of par for any proper purpose, or from increasing, decreasing, or abolishing a reserve.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.934 Voting class of voting securities; limit; notice of proposed acquisition; notice of disapproval of proposed acquisition; hearing; furnishing information to supervisor; grounds for disapproval of proposed acquisition.

Sec. 934. (1) A person, or a group of persons acting in concert, shall not acquire the power to vote 25% or more of any class of voting securities of an association through a purchase, assignment, transfer, pledge, or other disposition of voting securities unless the supervisor has been given prior written notice of the proposed acquisition by the acquiring person or group of persons, or by the federal savings and loan insurance corporation pursuant to the change in the savings and loan control act of 1978, 12 U.S.C. 1730, at least 30 days before the proposed acquisition, and the supervisor has not issued a decision disapproving the proposed acquisition before its proposed effective date.

(2) The supervisor shall notify the acquiring party in writing of any decision to disapprove a proposed acquisition within 3 days after the supervisor's decision or before the effective date of the proposed acquisition, whichever is sooner. Within 10 days after receipt of the supervisor's decision of disapproval, the acquiring party may request a hearing to reconsider the decision of the supervisor, which shall be conducted pursuant to Act No. 306 of the Public Acts of 1969, as amended.

(3) The supervisor may prescribe rules or application forms to be used for the furnishing of information to the supervisor concerning the identity, personal history, business background, financial condition, and existence of pending legal proceedings with respect to each person proposing to participate in an acquisition subject to this section, as well as information concerning the terms, conditions, and manner of making the proposed acquisition, the source of funds to be utilized, and any plans or proposals for material changes in the management, policies, operations, or organization of the association to be acquired. The supervisor shall disapprove any proposed acquisition subject to this section if any of the following occur:

(a) The financial condition of any acquiring person may jeopardize the financial stability of the association to be acquired or prejudice the interests of the depositors of the association.

(b) The competence, experience, or integrity of any acquiring person or any proposed management personnel indicates that it would not be in the best interests of depositors of the association or the public to permit the person to control the association.

(c) Any acquiring person neglects, fails, or refuses to furnish the information required under this section by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 10

491.1000 Unsafe or unsound practices or violation or threatened unsafe or unsound practices or violation; notice of charges; hearing; consent to issuance of cease and desist order; final or temporary cease and desist order; injunction.

Sec. 1000. (1) If the supervisor has reasonable cause to believe that an association, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association is engaging, has engaged or is about to engage in an unsafe or unsound practice in conducting the business of the association, or has violated, is about to violate, or is violating a law, rule, regulation, charter, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the association or any written agreement entered into with the supervisor, the supervisor may issue and serve upon the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association a notice of charges concerning the alleged unsafe or unsound practices or violation or threatened unsafe or unsound practices or violation, which shall contain a statement of the facts constituting the alleged unsafe or unsound practices or violation, and shall fix a time and place at which a hearing shall be held to determine whether an order to cease and desist from conduct causing the alleged unsafe or unsound practices or violation should be issued against the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of the association. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless another date is set by the supervisor at the

request of the association. Unless the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of the association is represented at the hearing by a duly authorized representative, the association or person shall be considered to have consented to the issuance of the cease and desist order. In the event of the consent, or if upon the record made at the hearing, the supervisor finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the supervisor may issue and serve upon the association, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association an order to cease and desist from conduct causing the unsafe or unsound practice or violation. By provisions which may be mandatory or otherwise, the order may require the association and its directors, officers, employees, agents, or other person participating in the conduct of the affairs of the association to cease and desist from the conduct causing the unsafe or unsound practice or violation and to take affirmative action to correct the conditions resulting from the unsafe or unsound practice or violation.

(2) A cease and desist order shall become effective at the expiration of 30 days after the service of the order upon the association, or any director, officer, employee, agent or other person participating in the conduct of the affairs of the association, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the supervisor or in a reviewing court.

(3) Whenever the supervisor determines that the violation or threatened violation, or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association pursuant to this section, or the continuation of the unsafe or unsound practice or practices, or violation, is likely to cause insolvency or substantial dissipation of assets or earnings of the association, or is likely to seriously weaken the condition of the association, or is likely to otherwise seriously prejudice the interests of its depositors, the supervisor may issue a temporary order requiring the association or any director, officer, agent, or other person participating in the conduct of the affairs of the association, to cease and desist from conduct causing the unsafe or unsound practice or violation. A temporary cease and desist order shall become effective upon service upon the association and, unless set aside, limited, or suspended by a court in proceedings authorized by this section, shall remain effective and enforceable until the supervisor dismisses the charges specified in the notice, there has been a hearing held pursuant to this section as a result of which it was determined not to issue a final cease and desist order, or, if a final cease and desist order is issued against the association or any director, officer, agent, or other person participating in the conduct of the affairs of the association, until the effective date of the order.

(4) Within 10 days after an association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association has been served with a temporary cease and desist order, the association may apply to the circuit court for the county in which the home office of the association is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges served upon the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the association under this section.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1002 Report on violation or detrimental condition; directing discontinuance of violation; ordering correction of detrimental condition; appointment and duties of conservator; proceedings by attorney general; preparation and filing of report; return of association to board; liquidation and dissolution.

Sec. 1002. (1) If the supervisor, as a result of an examination or from a report made to the supervisor, finds that an association appears to be violating the association's articles of incorporation or bylaws, or the laws of this state or of the United States, or a rule promulgated or order issued by the supervisor, or that the association's financial stability is impaired as a result of the association's conducting business in an unsafe, unsound, or illegal manner, the supervisor shall state by a formal written report to the board of the association any alleged violation or detrimental condition considered to exist, and may direct discontinuance of a violation or order the correction of the detrimental condition.

(2) If the board fails to correct the impaired financial stability, the supervisor may immediately appoint an individual as conservator for the association and order the conservator to take possession of all books, records, and assets of every description of the association and hold and retain possession pending further proceedings as specified in this act. If the board, secretary, or person in charge of the association refuses to

permit the conservator to take possession, the supervisor shall communicate this fact to the attorney general, who shall immediately institute proceedings to place the conservator in possession of the property of the association. Upon taking possession of the effects of the association, the conservator shall prepare a full and true statement of the affairs and conditions of the association, including an itemized statement of the association's assets and liabilities, and shall file the report with the supervisor. The conservator shall endeavor promptly to remedy the situations complained of by the supervisor. Within 6 months after the date of the appointment of the conservator, or within any other length of time as directed by the supervisor, the association shall be returned to its board and thereafter shall be managed and operated as if a conservator had not been appointed. If the situation complained of has not been remedied, the supervisor shall proceed pursuant to this act toward liquidation and dissolution of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1004 Conservator; rights, powers, and privileges; retention of special counsel or other experts; expenses; liquidation of assets; removal of director, officer, or employee.

Sec. 1004. A conservator appointed shall have all rights, powers, and privileges possessed by the officers, board, and members of an association over which the conservator has been appointed by the supervisor. The conservator may retain special counsel or other experts. However, the conservator shall not incur any expense other than normal operating expenses nor shall the conservator liquidate assets of the association except with the approval of the supervisor. The directors and officers shall remain in office and employees shall remain in their respective positions, but the conservator may remove a director, officer, or employee, if the order of removal of a director or officer is approved in writing by the supervisor, specifying the reasons for the removal.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1006 Association in charge of conservator; payments, withdrawals, and deposits; segregation of deposits; restrictions; return of deposits; revocation of segregation order; expenses of operation.

Sec. 1006. If an association is in the charge of a conservator, the borrowers of, and all others who are indebted to, the association shall continue to make payments to the association pursuant to the terms and conditions of their contracts, and the conservator, subject to rules the supervisor may prescribe, may permit members to make withdrawals from their accounts under this act. The conservator may accept deposits to accounts, but a deposit accepted by a conservator shall be segregated if the supervisor orders the segregation in writing. If segregated, a deposit accepted by a conservator shall not be subject to offset in any manner and shall not be used to liquidate any indebtedness of the association existing at the time of the appointment of the conservator or any indebtedness subsequently incurred while the association is in the possession of the conservator or a receiver subsequently appointed under this act. A depositor whose deposits have been segregated may request the return of those deposits and the conservator shall repay the deposits without interest or dividends. Before delivery of the association or the association's assets to any liquidators or to a receiver, the conservator shall return the money collected from depositors and segregated. The supervisor may revoke an order of segregation if it appears that the condition of an association justifies the action. If an order of segregation is revoked, the association may exercise all the powers the association could have exercised before the issuance of the order, and shall treat all deposits to accounts made by depositors during the period of segregation and all segregated credits in the same manner as all other deposits to accounts when made. The expenses of the operation of the association by the conservator shall be paid by the association including a per diem fee for the special services of the conservator in an amount to be established by the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1008 Injunction, appointment of receiver, and dissolution of association; grounds; report; proceedings.

Sec. 1008. If irregularities complained of in an order by the supervisor under section 1002 are not corrected, or if irregularities complained of in a report of a conservator are not corrected, or if from the report of an examiner it appears to the supervisor that an association: is in an insolvent condition; is pursuing a course which threatens to result in the association's insolvency; is in violation of a valid and applicable law, rule, or regulation, or lawful order of the supervisor; or is concealing any of its assets, books, or records; and if it is in the best interests of the depositors and other creditors that the association liquidate and be dissolved, then the supervisor shall communicate that fact together with a copy of the pertinent report to the attorney general, who shall promptly institute necessary proceedings to enjoin the association from doing any further business, to appoint a receiver for the association, and to dissolve the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1010 Receiver; appointment and qualifications; expenses; books, records, and assets; report.

Sec. 1010. If the provisions of section 1008 apply, the supervisor shall request that the attorney general apply to the circuit court for the county in which the association is located, or to the circuit court for the county of Ingham, for the appointment of a receiver for the association. The court may appoint as receiver a competent and disinterested person recommended by the supervisor. The supervisor shall be reimbursed out of the assets of the receivership for all sums expended by the supervisor in connection with the receivership as expenses, compensation of the examiners, or otherwise. All expenses of a receivership, including those incurred by the supervisor in connection with the receivership, shall be paid out of the assets of the association upon the approval of the supervisor and upon order of the appointing court. The expenses shall be a first charge upon the assets and shall be fully paid before a final distribution or payment of liquidating dividends to creditors, depositors, or members. Pending action on the supervisor's application to the court, the supervisor may immediately take possession of the books, records, and assets of every description of the association and hold the books, records, and assets. The books, records, and assets shall not be subject to levy, attachment, execution, or other process available to creditors of the association. The receiver shall make a report to the supervisor of acts and proceedings instituted under this section.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1012 Liquidation and dissolution; procedures; provisions governing appointment of receiver or other liquidating agent.

Sec. 1012. The sole and exclusive procedures for the liquidation and dissolution of an association to which this act is applicable shall be the procedures prescribed in this act, and a receiver or other liquidating agent shall not be appointed for those purposes or for an association or the association's assets and property except as expressly provided in this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

ARTICLE 11

491.1100 Sale of savings accounts; exemption from securities laws.

Sec. 1100. The sale of savings accounts issued by an association or a federal association is exempt from all laws of this state which provide for the supervision and regulation of the sale of securities or the registration of brokers, dealers, and agents in connection with the sale of securities, and the sale of accounts shall be legal without any action or approval whatsoever on the part of an official authorized to license, regulate, and supervise the sale of securities or the registration of brokers, dealers, or agents in connection with the sale of securities.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1102 Acknowledgments or proofs of written instruments by public officer; validity.

Sec. 1102. A public officer qualified to take acknowledgments or proofs of written instruments shall not be disqualified from taking acknowledgment or proof of an instrument in writing in which an association is interested by reason of the officer's membership in or employment by the association, and the acknowledgment or proofs previously taken shall remain valid.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1104 Rights of association to take action to avoid loss.

Sec. 1104. Subject to section 458, this act shall not be construed to deny an association the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on a loan or investment made or an obligation created in good faith before the effective date of this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1106 Violation as misdemeanor; penalty.

Sec. 1106. A person who violates a provision of this act for which specific punishment is not provided under this act or any other law applicable to the violation, is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, or imprisonment for not more than 6 months, or both.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1108 False or derogatory statement or rumor as misdemeanor; penalty.

Sec. 1108. A person who wilfully and knowingly makes, issues, circulates, transmits, or causes or knowingly permits to be made, issued, circulated, or transmitted, a statement or rumor, verbal, written, printed, or reproduced in any manner, that is untrue in fact and is directly or by inference false or malicious in that the statement or rumor is calculated to injure the reputation or business or derogatory to the reputation, financial condition, or standing of an association or a federal association, shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1110 Laws regulating business and affairs of associations or federal associations.

Sec. 1110. Except as expressly provided in this act or a law of this state, the business and affairs of associations or federal associations shall not be affected, governed, or otherwise regulated by the laws of this state governing business corporations generally, and Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws, shall not apply to associations organized or doing business under this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1112 Federal associations, service corporations, members, and depositors; rights, powers, privileges, benefits, immunities, and exemptions.

Sec. 1112. Unless federal law or regulation provides otherwise, federal associations, their service corporations, members, and depositors shall possess all of the rights, powers, privileges, benefits, immunities, and exemptions that are provided by this act to associations, their service corporations, members, and depositors.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1114 Foreign associations or agents; law governing transaction of business in state.

Sec. 1114. Foreign associations or their agents, chartered to do business in another state, maintaining a branch office, agency, or similar facility in this state shall be considered to be transacting business in this state. The business of the foreign association conducted in this state shall be transacted in accordance with the law of this state governing associations.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1116 Foreign association; conditions to transaction of business in state.

Sec. 1116. A foreign association shall not transact business within this state until the foreign association procures from the supervisor a certificate of authority, and unless domestic associations and domestic savings banks are permitted by the law of the state in which the foreign association is organized to engage in or transact business in that state to the same extent as the foreign association desires to transact business in this state. To procure a certificate of authority the foreign association shall comply with all of the following:

(a) File with the supervisor a certified copy of its current articles of incorporation or charter, a certificate or other document attesting to its continued existence as a corporation, a verified copy of its bylaws and all amendments to the bylaws, together with a statement of its financial condition the same as is required annually from all associations organized under the laws of this state.

(b) File with the supervisor a written instrument properly executed agreeing that a summons or process of a court in this state may issue against the foreign association from any county in this state, and when served upon the supervisor shall be accepted irrevocably as a valid service upon the foreign association. The supervisor shall mail a copy of any legal process served upon the supervisor to the home office of the foreign association and within 6 days shall certify to the court from which the summons or process issued the fact of the mailing.

(c) File with the supervisor a copy of the certificate evidencing that its savings accounts are insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation.

(d) Pay an admission fee for the privilege of transacting business in this state in the amount specified by this act.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1118 Foreign association; validity of certificate of authority; conditions to renewal of certificate.

Sec. 1118. Each certificate of authority issued to a foreign association to do business in this state shall remain valid until the following February 1. Annually thereafter, upon the filing of an annual report as is

required from an association, the payment of the required annual renewal fees, the filing of the foreign association's most recent report of examination by the federal savings and loan insurance corporation or federal deposit insurance corporation, and upon being satisfied that the foreign association is conducting its business in accordance with the law of this state, and if the supervisor regards the foreign association as safe, reliable, and entitled to public confidence, the supervisor shall issue a renewal of the certificate of authority.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1119 Definitions; control of savings association or another holding company; location of savings association; meaning of state chartered savings association; charter or acquisition of Michigan associations or Michigan holding companies by out-of-state association or out-of-state holding company; opening or acquiring branch offices; conditions; form, contents, and approval of application; charter or acquisition of savings associations by Michigan association or Michigan holding company; opening or acquiring branch offices; filing and approval of application; requirements; determination; powers or privileges of acquired savings association not affected; authority of holding company not impaired or affected; comments on application by supervisor; agreement as condition of approval; rules; assessment of composite records; excessive interest rates; reciprocity.

Sec. 1119. (1) As used in this section:

(a) "Acquire" means 1 or more of the following:

(i) Merge, consolidate or combine with.

(ii) Directly or indirectly gain ownership or control of at least 10% of the voting shares.

(iii) Directly or indirectly acquire or gain control of all or a substantial portion of the assets of.

(iv) Take any other action that results in direct or indirect control of.

(b) "Company" means any corporation, partnership, trust, joint-stock company, or similar organizations, but does not include the federal savings and loan insurance corporation, any federal home loan bank, or any company the majority of the shares of which is owned by the United States or any state, or by an officer of the United States or any state in his or her official capacity, or by an instrumentality of the United States or any state.

(c) "Consumer loan" means credit offered or extended by a lender primarily for personal, family, or household purposes, except for a loan, mortgage, or advance secured by a first lien on residential real property or by a first lien on a mobile home.

(d) "Holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company under this definition.

(e) "Lender" means a savings association, holding company, or a subsidiary of a savings association or holding company.

(f) "Michigan association" means an association or a federal association located in this state.

(g) "Michigan holding company" means a holding company which has designated to the federal savings and loan insurance corporation this state as the state in which the principal savings and loan business of the holding company is located.

(h) "Out-of-state association" means a savings association located in a state other than this state.

(i) "Out-of-state holding company" means a holding company which has designated to the federal savings and loan insurance corporation a state other than this state as the state in which the principal savings and loan business of such holding company is located.

(j) "Savings association" means any company, wherever located, and regardless of whether federally or state chartered, the deposits of which are insured by the federal savings and loan insurance corporation and any domestic savings bank.

(k) "State" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(2) For the purposes of this section, a company controls a savings association or another holding company if it is deemed to have control thereof under section 408(a)(2) of title IV of the national housing act, 12 USC 1730a. In the case of a federal association, a savings association is located in the state in which its home office is located, and in the case of a state chartered association, the state in which it is chartered.

(3) If a savings association is referred to in this section as state chartered, it means that the association is chartered by a state and is not federally chartered.

(4) An out-of-state association or out-of-state holding company may charter or acquire 1 or more Michigan associations or Michigan holding companies, or in the case of an out-of-state association, open or acquire 1 or more branch offices, if the following conditions, to the extent applicable, are met:

(a) The supervisor determines that the laws of the state in which the out-of-state association or out-of-state holding company is located authorize a Michigan association or a Michigan holding company, as appropriate, to take action in that state similar to the action proposed by the out-of-state association or out-of-state holding company in Michigan, under conditions which are not unduly restrictive.

(b) The supervisor determines that an acquisition under subdivision (a) would not restrict the powers or privileges of any savings association acquired in that state.

(c) In the case of an out-of-state chartered association opening a branch office, the association submits an application which is approved by the supervisor in accordance with the procedures contained in section 522. The supervisor shall treat an application from an out-of-state chartered association in the same manner as he or she would treat an application from a domestic association.

(d) In the case of a merger involving 1 or more out-of-state associations, in which the resulting association will be a domestic association, the out-of-state association and domestic association follow the procedures and the supervisor approves the merger as set forth in section 800. The supervisor shall treat any plan of merger involving an out-of-state association in the same manner that he or she would treat a plan of merger involving only Michigan associations.

(e) The supervisor determines that the proposed action is not likely to impair the safety and soundness of any domestic association to be acquired, or of a domestic association that is already controlled by an out-of-state holding company.

(f) The supervisor determines that the applicant has complied with the requirements of subsections (12) and (13).

(5) An out-of-state association or out-of-state holding company seeking to take an action pursuant to subsection (4) shall file an application with the supervisor. The application shall be in a form and contain the information considered necessary by the supervisor. The supervisor shall approve the application if the supervisor determines that the applicant is an out-of-state association or out-of-state holding company and that all of the applicable conditions set forth in subsection (4) are met.

(6) In the case of any proposed action under subsection (4), if any future federal legislation or regulation requires an approval by a state official in addition to any approvals which may be required under subsection (5), the supervisor is authorized to and shall grant or deny that approval in accordance with the standards set forth in the applicable federal legislation or regulation, and if there are no such standards, shall grant the approval if the applicable conditions set forth in subsection (4) are met.

(7) A Michigan association or Michigan holding company may charter or acquire 1 or more savings associations or, in the case of a Michigan association, open or acquire 1 or more branch offices in any state outside of this state. A domestic association or Michigan holding company desiring to take an action pursuant to this subsection shall file an application with the supervisor. The supervisor shall approve the application if the domestic association or Michigan holding company meets the requirements of subsections (12) and (13).

(8) The supervisor shall make a determination required by subsection (5) or (7) within 60 days after receipt of the application.

(9) Any action of any savings association or holding company pursuant to this section shall not affect the powers or privileges of an acquired savings association.

(10) Nothing in this section shall be construed as impairing or affecting the authority of a holding company that is located in this state and is not controlled by an out-of-state holding company to acquire control of a Michigan association.

(11) Notwithstanding the claim that an out-of-state association, an out-of-state holding company, a Michigan association, or a Michigan holding company, proposing to engage in activities permitted under subsection (4) or (7), and due to the operation of federal law, need not obtain the supervisor's approval pursuant to subsection (5) or (7), it shall furnish the supervisor a copy of any application filed with the appropriate federal agency. The supervisor may, within 30 days, submit comments on the application to the appropriate federal agency.

(12) In connection with an application filed by a holding company or savings association pursuant to subsection (5) or (7), the applicant, as a condition of the approval, shall sign an agreement which shall be in substantially the following form:

"Applicant and all its subsidiaries, wherever located, when making a consumer loan to a resident of this state who does not physically travel out of this state, in order to obtain the consumer loan, hereby agrees to comply with the laws of this state governing the maximum rate of interest that may be charged, and other provisions relating to that type of consumer loan which protects consumers. This written agreement shall not apply to unsecured open end credit extended by a savings association not located in this state, or to any other subsidiaries of the applicant not located in this state, to the extent that federal law may make provisions of Michigan law not applicable to credit extended by lenders. This written agreement shall not require a

Michigan association, which is a subsidiary of the applicant, to comply with the laws of this state governing the maximum rate of interest that may be charged, and other provisions relating to that type of consumer loan which protects consumers, if federal law is enacted to preempt any of the provisions of the laws of this state for a consumer loan made to a resident of this state by a Michigan association. Noncompliance shall be limited to the specific extent of the preemption. Nothing in this agreement shall exempt the applicant or any of its subsidiaries from complying with Michigan law to the extent that the lender is otherwise required to comply with Michigan law.”

Any material deviation from the form of the agreement provided in this subsection shall be by rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any rule promulgated pursuant to this subsection shall not add to, or delete any of, the substantive provisions provided in this subsection.

(13) In connection with an application filed by a holding company or savings association pursuant to subsection (5) or (7), the supervisor shall assess the composite record of the subsidiaries of the holding company or the savings association in meeting the credit needs of the communities in the state in which those entities are located, including low and moderate income neighborhoods consistent with the safe and sound operation of those entities. In assessing the record of those entities, the supervisor shall consider the factors considered by the appropriate federal financial supervisory agency pursuant to regulations promulgated under the community reinvestment act of 1977, 12 U.S.C. 2901 to 2905 and a copy of the most recent assessment of those entities conducted by the appropriate federal financial supervisory agency pursuant to the community reinvestment act of 1977. The supervisor shall give attention to the objective of minimizing the administrative burdens of holding companies and savings associations. The supervisor may seek to obtain from the appropriate federal financial supervisory agency copies of relevant information in the possession of the agency which may bear upon the record of the applicant or its subsidiaries as appropriate in meeting the credit needs of their entire communities, including low and moderate income neighborhoods, consistent with the safe and sound operation of the applicant or subsidiaries to make the assessment provided for in this subsection. This subsection shall not authorize the supervisor to make an on-site examination of a state chartered association for the purpose of assessing the record of the association.

(14) If a lender, not located in this state, takes a security interest on a consumer loan and charges a rate of interest in excess of the rate permitted by the laws of this state, or otherwise violates a provision of the laws of this state relating to that type of consumer loan which protects consumers, such security interest shall not be enforceable unless the lender shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. Examples of bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment by a lender is not a bona fide error. This subsection shall not apply if the consumer is a resident of this state who physically travels out of this state in order to obtain the consumer loan.

(15) If another state has enacted legislation which contemplates permitting a Michigan savings association or Michigan holding company to charter or acquire 1 or more savings associations or holding companies located in that state, or opening or acquiring 1 or more branch offices in that state, and if a transaction is prevented by a determination by the appropriate official or agency, or a court of competent jurisdiction in that state, that Michigan law does not satisfy the reciprocity standard established by a law of that state, the supervisor shall take appropriate actions to communicate with persons in that state to encourage action to bring about a positive determination in that state with respect to reciprocity with Michigan. The supervisor shall also promptly notify the clerk of the House of Representatives and Secretary of the Senate of any negative determination by another state with respect to reciprocity.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1120 Foreign association; ownership of loans or participations or interests in loans secured by mortgages of real estate.

Sec. 1120. A foreign association that does not transact business within this state may acquire or, through another person entitled to transact business in this state, may make loans, or participations or interests in loans that are secured in whole or in part by mortgages of real estate located in this state, and a foreign association may purchase a loan, or participation or interest in a loan secured in whole or in part by a mortgage of real estate located in this state, without maintaining authority to transact business in this state under this act or any other law of this state relating to the qualification or authority and without paying fees with respect thereto. The failure of a foreign association to qualify or maintain authority to transact business in this state under this act or other law of this state or the failure of a foreign association to pay fees with respect thereto shall not affect or impair the association's ownership of loans or participations or interests in loans, whether made or

acquired before or after the effective date of this act. The association's right to collect and service the loans or participations or interests in loans through another person entitled to transact business in this state, the association's right to enforce the loans or participations or interest in loans or to acquire, hold, protect, convey, lease, or otherwise contract and deal with respect to the property mortgaged as security for the loan or the participation or interest in a loan also shall not be impaired.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1122 Foreign association; examination of business transacted in state; expense; certified report of examination.

Sec. 1122. The business transacted in this state by a foreign association which has been granted a certificate of authority to transact business in this state shall be subject to the same examinations as associations. The expense of all examinations of foreign associations shall be paid by the foreign association examined and the money received shall be paid into the state treasury and be credited to the financial institutions bureau and money in this account shall be used only for the operation of the financial institutions bureau. Instead of an examination, the supervisor may accept a certified report of examination conducted by a duly constituted state or federal supervisory authority with respect to the foreign association. The supervisor shall, absent extraordinary circumstances, coordinate any examination of a foreign association with the examinations conducted by other state or federal supervisory authorities so as to avoid duplicate examinations.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1124 Foreign association; grounds for supervisory revocation of certificate of authority; notice of revocation; further payments prohibited; appeal.

Sec. 1124. (1) If the supervisor finds, upon examination or investigation that a foreign association or its agent does not conduct its business in accordance with law, that the affairs of the foreign association are in an unsound condition, or if the foreign association refuses to permit examinations to be made or fails to file an annual report as provided in this act, the supervisor may revoke the certificate of authority granted the foreign association to transact business in this state. Upon revocation of the certificate of authority, the supervisor shall mail a notice of the revocation to the home office of the foreign association. The supervisor may also publish notice of revocation in a newspaper of general circulation in any areas where the foreign association conducts business. After the notification of the foreign association, an agent of the foreign association shall not receive further payments on savings accounts from residents of this state.

(2) If the supervisor refuses authorization or revokes the authorization of a foreign association to transact business in this state under this act, the foreign association may appeal that decision pursuant to Act No. 306 of the Public Acts of 1969, as amended.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1126 Foreign association; compliance with act; void contracts; violation or noncompliance; amount of civil fine; recovery and disposition of fine.

Sec. 1126. A foreign association shall not be permitted to transact business in this state unless this act is fully complied with. Contracts made by a foreign association while in default are void. A foreign association which violates or fails to comply with this act is subject to a civil fine of not less than \$100.00, nor more than \$1,000.00, to be recovered by an action brought in the name of the people of this state in a court of competent jurisdiction. A fine collected under this section shall be paid into the general fund.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1128 Conduct constituting misdemeanor; penalty; disposition of fines.

Sec. 1128. A person who acts as agent for a foreign association not authorized to transact business in this state, and a person aiding in the transaction of the business of the association in this state is guilty of a misdemeanor, punishable by a fine of not less than \$50.00, nor more than \$500.00 for each offense. A person who fails to pay the fine is subject to imprisonment for not more than 1 year. Except as otherwise provided by law, all fines collected under this section shall be paid into the general fund.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1130 Association incorporated before effective date of act; name, rights, powers, privileges, and immunities; articles, charter, bylaws, constitution, or rules; contractual obligations; duties, liabilities, disabilities, and restrictions; actions or penalties.

Sec. 1130. The name, rights, powers, privileges, and immunities of each association, incorporated in this state before the effective date of this act, shall be governed, controlled, construed, extended, limited, and determined by this act to the same extent and effect as if the association had been chartered under this act. The articles of association or charter, bylaws, and constitution, or other rules of each association made before the effective date of this act are modified, altered, and amended by this act to conform to this act, and are declared void to the extent that they are inconsistent with this act; except that the obligations of an existing association, whether between the association and the association's members, or any of them, or any other person, on a valid contract existing on the effective date of this act between the members of the association, or between the association and any other person shall not be in any way impaired by this act. With the exceptions provided in this section, each association shall possess the rights, powers, privileges, and immunities and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this act, notwithstanding any provision to the contrary in the association's articles of incorporation, bylaws, constitution, or rules. This act shall not affect a cause of action, liability, penalty or action, or special proceeding, which on the effective date of this act is accrued, existing, incurred, or pending, but the same may be asserted, enforced, prosecuted, or defended as if this act had not become law.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1132 Enforcement of obligations contracted before effective date of act.

Sec. 1132. All obligations to an association contracted before the effective date of this act shall be enforceable by the association and in the association's name, and demands, claims, and rights of action against an association may be enforced against the association as fully and completely as they may have been enforced before the effective date of this act.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1134 Fees.

Sec. 1134. (1) Each association in existence on June 1, 1987, shall be subject to and shall pay to the supervisor the following fees, which shall be paid into the state treasury and be credited to the financial institutions bureau and money in this account shall be used only for the operation of the financial institutions bureau:

- (a) Examining, filing, and acting upon an application to organize a domestic association, \$1,500.00.
- (b) Examining, filing, and acting upon an application to establish a new branch office or to relocate an existing principal or branch office, \$200.00.
- (c) Examining, filing, and acting upon an application to establish or relocate an agency or other facility for the transaction of business, \$100.00.
- (d) Making the annual examination required by this act, a fee sufficient to meet the field expenses of the staff personnel of the supervisor actually incurred in the course of the examination, but not less than \$300.00.
- (e) Examining, filing, and acting upon an application for approval to merge, consolidate, convert to a federal association, convert its capital structure, or dissolve, \$200.00.
- (f) Examining, filing, and certifying articles of incorporation, bylaws, or any amendment to articles of incorporation or bylaws, \$15.00.
- (g) Filing and certifying an annual or special report required by law, \$5.00.

(2) Each association which comes into existence after June 1, 1987, shall pay an annual supervisory fee of not less than 7-1/2 cents nor more than 25 cents for each \$1,000.00 of the gross amount of the assets of the association, which fee shall be determined by the supervisor. The supervisory fee for any association shall not be less than \$1,000.00. The supervisor may assess a supplementary fee on an association, when, in the supervisor's judgment, the records of the association demand examination and supervision procedures not performed in the ordinary course of business. The supplementary fee shall be based on the excess time over and above the normal time spent on examining and supervising the association, as determined by the supervisor. However, the sum total of the supplementary fee and the normal supervisory fee shall not exceed 25 cents for each \$1,000.00 of the gross amount of the assets of the association. The fee shall be computed on the basis of the statement of condition of each association as of December 31 of each year, shall be invoiced as of the succeeding July 1, and shall be payable promptly upon receipt of invoice.

(3) The supervisor shall periodically establish a schedule of fees to be paid by an association which comes into existence after June 1, 1987, or by a foreign association for processing by the financial institutions bureau of 1 or more of the following:

- (a) Examination of a trust department.
- (b) Examination of an association at the request of the board of directors of the association.

- (c) Examination of subsidiaries, service corporations, and affiliates of an association.
 - (d) Processing an application for the organization of a new association.
 - (e) Processing an application for a merger or consolidation.
 - (f) Processing an application for a purchase of assets.
 - (g) Processing an application for a new branch office.
 - (h) Processing an application for a conversion.
 - (i) Evaluation of data processing facilities.
 - (j) All other applications and examinations considered necessary by the supervisor.
- (4) The amount of a fee established pursuant to subsection (3) shall be equal to the estimated cost to the financial institutions bureau for processing the examination, evaluation, or application for which the fee is imposed.
- (5) In addition, any expenses incurred by the financial institutions bureau in publishing or serving notices required under this act shall be charged by the supervisor. Reasonable fees shall be determined and charged by the supervisor for furnishing and certifying copies of documents filed with the financial institutions bureau.
- (6) If any fees or expenses provided for in this section are not paid after due notice, the supervisor may maintain an action against the delinquent person for the recovery of the fees or expenses with interest and costs.
- (7) All fees and expenses provided for in this section shall not be refundable and shall be paid into the state treasury to the credit of the financial institutions bureau. Money in this account shall be used only for the operation of the financial institutions bureau.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.1135 Repealed. 2005, Act 193, Imd. Eff. Nov. 7, 2005.

Compiler's note: The repealed section pertained to filing of a suspicious activity report by an association with a federal agency.

ARTICLE 12

491.1200 Repeal of §§ 489.501 to 489.857 and 489.861 to 489.920.

Sec. 1200. Sections 1 to 457 and 461 to 520 of Act No. 156 of the Public Acts of 1964, as amended, being sections 489.501 to 489.857 and 489.861 to 489.920 of the Compiled Laws of 1970, are repealed.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.1202 Effective date.

Sec. 1202. This act shall take effect January 1, 1981.

History: 1980, Act 307, Eff. Jan. 1, 1981.